CORRESPONDENCE

—OF—

"FIRST CITIZEN"—Charles Carroll of Carrollton,

—AND—

"ANTILON"—Daniel Dulany, Jr.,

1773,

With a History of Governor Eden's Administration in Maryland.

1769-1776.

By ELIHU S. RILEY.

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This Volume is inscribed, with affectionate esteem, by the author, to

WILLIAM SHEPARD BRYAN,

Formerly Associate Justice of the Court of Appeals of Maryland.

A judge—learned in the law—just in the application of its principles;

A man—chivalrous in spirit; independent in thought; brave in deed;

A friend—sincere and steadfast.

PREFACE.

It had been, for a number of years, the desire of the author of this book to rescue from the danger of destruction, by a multiplicity of copies, the one perfect series of letters of Charles Carroll, of Carrollton, and Daniel Dulany, on the question of the right of the Governor of Maryland to establish the fees of public officers without the consent of the Legislature. That one complete record is found in the files of the *Maryland Gazette*, in the Maryland State Library, at Annapolis. The "Lower House," of Maryland, January Session, 1902, now known as the House of Delegates, the action of whose predecessors, in defence of their rights and the rights of the people, developed in 1773 this correspondence, made practical the wish of the author to preserve to the citizens of Maryland and their posterity this remarkable discussion—it is cautiously submitted—the most celebrated of colonial times. Yet, this commendable work of the House of Delegates would not have been accomplished had it not been for the favorable consideration given the subject, and the valuable aid extended to the author, by a legion of endorsers of the movement, who aided him in bringing the matter to the attention of the House.

While the author does not design to name them in numerical progression, in the order of their comparative assistance, yet he would be ungratefnl if he did not state that, of all those friends who encouraged his efforts, Mr. James P. Bannon, of Anne Arundel; Delegate Robert W. Wells, of Prince George's; Delegate John G. Rogers, of Howard, chairman of the Committee on Ways and Means; Delegates L. L. Bawsell, Peter J. Campbell and Isaac Lobe Straus, of Baltimore city, were at

the forefront in their invaluable efforts to secure the favorable action of the House of Delegates upon the report to print.

Amongst those who gave their approval of, and their assistance to, the effort to secure the publication of these letters were his Honor Chief Justice James McSherry, of the Court of Appeals, and Associate Justices James Alfred Pearce, A. Hunter Boyd and Henry Page, of the same distinguished bench. The author is also indebted to the friendly offices of Senator Stevenson A. Williams, of Harford, who, in the session of 1900, offered a bill to print this correspondence, and gave the movement his approval. Senator Jacob L. Moses, of Baltimore city, was, also, with Senator Williams, another earnest and intelligent supporter of the effort to print during the session of 1900.

In the House of Delegates itself every one of the delegates who supported the report on its final vote were ardent friends of the proposition, yet there were those among these who were pre-eminently earnest in their endeavors to secure favorable action on the part of the House, and whenever the reader experiences any gratification at the publication of this remarkable discussion, he should feel a corresponding sentiment of approval of those delegates for their valuable aid in making public these hidden records of the ability and courage of our Maryland ancestors. Those who so ably seconded the movement, were: Delegates L. L. Mattingly, of St. Mary's; James R. Brashears, of Anne Arundel; Joseph Muir, of Somerset; Joshua Clayton, of Cecil; and Patrick E. Finzel, of Garrett.

The vote upon the report is appended to the order authorizing the publication. It is confidently believed that, could the honest minority against the report have had that light upon the matter that the clouds of haste, which accompany so much of legislation in the expiring hours of a session, obscure, the author feels that the order to print would have had their support as well as that of the sixty-four members who are recorded in favor of the report of the Committee on Ways and Means. The author is under obligations to Mr. William Meade

Holladay, of Annapolis, for invaluable assistance in preparing for the vote upon the motion to reconsider and print.

In re-printing the letters of First Citizen and Antilon, the originals, as they appeared in the *Maryland Gazette*, have been followed exactly in orthography, capitalization, punctuation and italicization. The reading of the last proofs of the letters has been done by Mr. Louis H. Dielman, of the Maryland State Library, a gentleman who, besides being admirably equipped by his ability and experience for this work of arduous labor, threw into the friendly assistance that he cheerfully gave the author, an ardor born of an earnest desire to have this correspondence issued to the public without fault or blemish.

The printers of the volume have not only executed their letter press in admirable typography, but they have been, equally, with the others engaged in the publication of this work, earnest in their endeavor to have the book published free from mistakes. It was rare when the author's proofs contained any corrections that had escaped the vigilant eyes of the State Printers.

Maryland has an honorable and illustrious history. The records of the deeds of valor and offices of distinguished statemanship that her sons have performed, are sometimes found enrolled on the pages of their country's written histories, but are more often hidden in the musty rolls of Maryland's well preserved archives. To bring these records to light for public inspection, the people of Maryland have not been swift. The times are ripe for the sons of Maryland to exalt her fame by rehearsing the proud deeds of their ancestors in every line of public and patriotic duty—on the forum, in the field, and upon the seas—where, for the distinguished ability, heroic courage, and invincible valor of her citizens, Maryland will not yield superiority to any State in this great Republic of States.

ELIHU S. RILEY.

Annapolis, Maryland, December 23, 1902.

REPORT TO PRINT.

Mr. Wells, of Prince George's county, by request, offered the following preamble and order:

To the Members of the House of Delegates of Maryland, respectfully:—

Whereas, The history of the administration of Governor Eden was honorable for the greatest and most prolonged struggle the Freemen of Maryland ever made for their rights in colonial times—a struggle which lasted three years in denial of the claim of the Governor to revive by proclamation Acts of Assembly that had expired by limitation—and a struggle which was second only in importance to the Revolutionary contest, and which controversy brought forth the celebrated debate between Charles Carroll, of Carrollton, and Daniel Dulany, Jr., under the respective titles "First Citizen" and "Antilon;"

Whereas, These letters, remarkable for their learning, profound researches in the law, classic diction and patriotic sentiments of the sage of Carrollton; and

Whereas, The letters of Antilon now rest as they have for one hundred and twenty-nine years, existing only in the files of one newspaper, two copies remaining, Therefore,

ORDERED, That the State Printer, Edwin W. King, trading as King Bros., is hereby authorized and directed to furnish for the use of the House of Delegates four hundred copies of the Letters of "Antilon" and "First Citizen," the names respectively of Daniel Dulany, Jr., and Charles Carroll, of Carrollton, including the Letters, and a history of Governor Eden's administration—1769-1774—probably the most remarkable of colonial times in Maryland, which above-named work is in preparation

by Elihu S. Riley, said 400 copies to be delivered to the Chairman of the Committee on Printing of the House of Delegates, and sent to the State Librarian to be distributed as follows: 50 copies to the State Library; 242 copies to the members of the House and Senate, respectively, for distribution by them, that is, two copies each; two copies to the Maryland Historical Society Library; one copy to Johns Hopkins University; one copy each to the following colleges: Maryland Agriculture, Western Maryland, Washington, St. John's, St. Mary's, Baltimore City College and Charlotte Hall; and the remainder to the School Boards of Baltimore city and the several counties of the State, for the use of their libraries and scholars. And on the certificate of the Chairman of the House Committee on Printing to the State Comptroller, that the said four hundred copies have been delivered to the said Chairman of the House Committee on Printing, he, the Comptroller, shall issue his warrant to the State Treasurer to pay to the said Edwin W. King, trading as King Bros., State Printer, a sum not exceeding twelve hundred dollars for the publication and fifty dollars to the State Librarian to pay for postage and distribution of said books; the said money to pay for said work and distribution shall be paid by the Treasurer out of the money appropriated by the Act of 1900 to pay for the printing of the January Session of 1902.

The order was referred to the Printing Committee, which amended the order and referred the same to the Committee on Ways and Means On March 25th the Committee on Ways and Means made a favorable report on the preamble and order, which report was rejected by a vote of 31 to 44. On March 27th, Mr. Bawsell, of Baltimore city, moved a reconsideration of the vote by which the report was rejected, which motion was adopted. Whereupon, Mr. Bawsell moved that the report be adopted. Which motion was adopted by yeas and nays as follows:

Affirmative—Messrs. Mattingly, Grason, Kendall, Leatherbury, Watts, Shipley, Brashears, Smoot, Everhart, Painter,

Slade, Myers, Callahan, Benson of Talbot, Dryden, Muir, Hackett, Shepherd, Baker, Steele, Cosden, Clayton, Brooke, Wells, Curley, Norman, Thomas, Onley, Dirickson, Merrill, Nicodemus, McComas, Proctor, Carroll, Goldsborough, Jefferson, Melis, Bawsell, Bumgarner, Johnson, Foutz, Beasley, Campbell, Straus, Hoffman, Godwin, Morgan, Henkel, Biggs, Charles, Newcomer, Johnston, Sellman, Williams, Rodinette, Eilbeck, Drum, Fuss, Hoffacker, Rogers of Howard, Forsythe, White, Finzel, Ashby—64.

NEGATIVE — Messrs. Speaker, Simmons, Griffith, Smith, Mathias, Broening—6.*

*House Journal, page 1505.

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CHAPTER 1.

ARRIVAL OF GOVERNOR EDEN IN MARYLAND.

1769. Its illustrious annals of virtue, courage and patriotism is the most precious legacy of a State. The people of Maryland recount, with honorable pride, that it was that commonwealth, first in the history of the world, in which religious liberty was established by law, and where every citizen was given the right to worship God "according to the dictates of his own conscience, none daring to molest, or make him afraid;" they tell their children, with patriotic enthusiasm, that the Province of Maryland furnished the first volunteers that reported, to General Washington on the field of battle at Boston, under the first call of Congress for United States troops, and it was the first Province to maintain, in the perfectness of complete actuality, in its own right and by its own individual hand, the principle that there could be no taxation of the Freemen of any of the American Colonies without the consent of those Freemen. The Legislature of Maryland, January Session, 1902, authorized and directed this later story of the courage and patriotism of our ancestors to be perpetuated.

Robert Eden, Governor of Maryland, was the chief factor in the events that made it possible for Maryland to take this leading part in the assertion of the political rights of an American Colony. He was appointed Governor of the Province in 1769, succeeding the celebrated Horatio Sharpe. Eden was the last of the Proprietary Governors of Maryland. With his departure faded the twilight shadows of that social and colonial life that had made Annapolis unique in the annals of the British-American Provinces. Eden's administration was romantic in stirring historic adventure. It was under his hospitable roof that Washington was guest when at Annapolis,

and where the first American displayed that native dignity in conversation and broad liberality in opinion which so eminently distinguished his lofty character. Eden was still, in name, Governor when Maryland formulated her faith in the new nation, and he saw, helpless to prevent, its people prepare for and enter the arena of Revolution.

The strong and genial attributes of Eden were well suited to play their part in the approaching drama of political events in a city that had been the first in all the American Colonies to rise in arms and drive away by force, the King's Stamp Officer, his vessel and stamps when the ship and officer had attempted to land at the City Dock in Annapolis City.*

It was the lovely month of June when Governor Eden landed. At this season the picturesque scenery of Annapolis is particularly beautiful. On the fifth of the month the ship bearing Governor Eden, wife and family, arrived in the harbor. On coming to anchor the ship fired seven guns, which number was returned by the citizens. In the afternoon, when the Governor landed, he was met by all the members of the Governor's Council then in town, and a great number of citizens, the guns of the battery making the Severn resound with its salvos of welcome. On Tuesday morning, about ten o'clock, he went up to the council house, attended by his lordship's honorable council, where his commission was opened and published.

The royal Governor was a gentleman, "easy of access, courteous to all, and fascinating by his accomplishments," and so, too, Mr. William Eddis found him, for when he arrived in Annapolis, September 3, 1769, to take the position of English Collector of Customs, and made his appearance before the Governor, he says: "My reception was equal to my warmest wishes. The deportment of Governor Eden was open and friendly. He invited me to meet a party at dinner, and I took

* On or about September 20, 1765, Zachariah Hood, the Stamp Officer for Maryland, arrived with his stamps in Annapolis. His vessel was met at the City Dock by an indignant multitude of citizens of Annapolis, and Hood prevented from landing and his vessel was driven away. Thomas McNier, a citizen of Annapolis, had his thigh broken in the contest.

leave till the appointed hour, with a heart replete with joy and gratitude. On my return to the Governor, he introduced me, in the most obliging terms, to several persons of the highest respectability in the province. He treated me with the utmost kindness and cordiality; assured me of the strongest disposition to advance my future prosperity and gave an unlimited invitation to his hospitable table."

Not only to the select circle of a private company of his intimate friends did the Governor dispense his generous hospitality, but when the little city appeared in all its splendor on the anniversary of the proprietary's birth, he "gave a grand entertainment on the occasion to a numerous party; the company brought with them every disposition to render each other happy; and the festivities concluded with cards, and dancing which engaged the attention of their respective votaries till an early hour."

Although the Governor led in the festivities of the province, he was not unmindful of the weightier cares of State. Mr. Eddis, who spoke with the unction of a grateful heart and sanguine temperament, said of him: "He appears competent to the discharge of his important duty. Not only in the summer, but during the extreme rigour of an American winter, it is his custom to rise early; till the hour of dinner he devotes the whole of his time to provincial concerns; the meanest individual obtains an easy and immediate access to his person; he investigates, with accuracy, the complicated duties of his station; and discovers, upon every occasion, alacrity in the dispatch of business; and a perfect knowledge of the relative connections of the country."

Not only was Governor Eden moved by motives of principle and personal welfare to promote the well-being of the province, but, being a brother-in-law of Lord Baltimore, his family interests urged him to make the commonwealth prosperous. He was not wanting in any public enterprise to further the happiness of the province. A patron of the drama, it was by his liberal example, sufficient funds were raised to erect a

theatre in Annapolis on a commodious plan. He was, beside, the friend of education, and through his exertions a seminary was established "which, as it will be conducted under excellent regulations, will shortly preclude the necessity of crossing the Atlantic for the completion of a classical and polite education." So wrote Eddis.

Governor Eden presented, in his official capacity, the dual relationship of representative of the Proprietary of Maryland and the King of England and his Parliament; for, while the Governor was Lord Baltimore's regent in Maryland, the Proprietary himself was the tributary of the King of England and annually rendered his dues of two Indian arrow heads as the sign of his tutelary obligations and the Acts of Parliament, as far as they were applicable, had full force in the province of Maryland. This commonwealth was a welcome arena for any man who had political ambition. Made the capital of Maryland in 1694, Annapolis had witnessed many a battle royal between the "Freemen of Maryland," the representative body of the people, as the Lower House was called, and the Governor and Upper House, appointed by the Proprietary, Lord Baltimore, and which reflected his policy and defended his interests. There was thus an endless cause of controversy between the Governor and his Council on the one hand, and the House of Delegates on the other. Proprietary interest had only to assert its privileges beyond the pale of its perogative when the gauntlet was accepted by the Freemen of Maryland, and never did they flinch from maintaining their rights, nor were they ever unsuccessful in preventing encroachments upon the liberties of the people of Maryland. The history of the colonial House of Delegates of Maryland known, respectively, as "the Freemen of Maryland," "the Lower House," "the House of Delegates," and "the House of Burgesses," from its initial session in 1637 to its last, in 1774, is the recital of succession of patriotic and successful contests for the maintenance of the inalienable rights of the people of the province of Maryland.

Guarding with the jealousy of freemen their natural rights and constitutional privileges, the people of Maryland still

supported Lord Baltimore's government in all its just demands and rendered to the proprietary of the Province and the King of England, a loyal obeisance, probably more intense in its fealty to the British Sovereign than that felt by native born subjects themselves. Distance had increased their respect for King and Parliament.

In Annapolis, the seat of Provincial government, centered all the interests, social and political, of the commonwealth of Maryland. "Ye antient capital," of the Province, at this period, 1769, was the most famous, cultivated and dissipated city of the colonies. Settled in 1649, by a sturdy stock of Puritan refugees from Virginia, driven out by the churchmen of that colony for their religious beliefs, on this splendid material had been grafted, by successive emigrations, scions of the best blood of England; and when, in 1694, the capital of the Province was removed from St. Mary's to Annapolis, there came with it a coterie of settlers who soon formed a Court party with all the arts and refinements of European life and intrigues of political science, traditional usages and official position. It led its local festivities, and gave tone and zest to reciprocal hospitalities. The elegant homes of these gay and wealthy people, a dozen of which still remain in all their capacious proportions, show the comfort and luxury in which they lived.

Here the Legislature met; here were held the sessions of the Provincial Court, the High Court of Chancery, and the Court of Appeals; here were the residences of the Governor and his highest offices; and here his Council convened. These brought together the best legal minds of the colony, and all those who sought place or pursued pleasure, and with King William's School, which for nearly a century had been shedding the benfit of liberal education upon the capital, created a community of pre-eminent culture and superior refinement. Thus Annapolis became known, throughout the colonies, as "the Athens of America." In the decade preceding the Revolution, its life of fashion and frivolity, of culture and elegance had reached its height and development. Wealth

gave leisure and promoted education; education and leisure created a longing for refined and dissipated pleasures.

The presence of a large number of officials, some of whom had come from "Merry England," and had imported with its pleasures, its refined follies, and with the native invention of the province, devised a lengthened repertoire of social amusements, while the emoluments of office and the dividends of successful trade and the proceeds of productive plantations provided the means to gratify the taste of these gay and cultured devotees of fashionable festivities. The theater flourished in its highest art; the race-track blended excitement for the upper and lower strata of pleasure-seekers; the ball-room and its elegant and costly entertainments drew together a refined and beautiful company of women and learned and handsome men whose society was sought by the great Washington, who often came to Annapolis to enjoy the delights of an unending programme of rich and rare amusements.

The only place in the province, nor was its peer to be found in any of the colonies, that offered worshipers at the shrine of Fashion the opportunity to gratify a refined and cultured desire for the highest social function, Annapolis had now become a rendezvous of a gay, learned and dissipated society. The very lack of better mental effort, the want of useful and energizing employment, begat a longing for these trivial pleasures, which they named "enjoyment," because it relieved "from the ennui of the moment by occupation." Thus the gayety, culture, cleverness and very intellect of the province, from numerous potential causes, were gathered here. Its lawyers came to the courts, the judges to the bench, the delegates to the house of burgesses, at Annapolis, and even the planters whose tobacco had brought them fine revenues journeyed to the capital to spend the winter. They built costly and elegant houses as their homes, and furnished them in a style corresponding to their elegance.

The staple export—tobacco—brought back to the colony, in exchange, the luxuries of the foreign markets. Troops of

slaves, as obedient as the captives of the Orient, supplied the house with perfect service. Lumbering equipages, or old and rickety stage-coaches, generally drawn by splendid horses, bore the colonists about the country, while in the city, the sedan chair, carried by lacquers in rich liveries, was the luxurious car of the queens of the house. These favored people sat on carved chairs, at curious tables, "amid piles of ancestral silverware, and drank punch out of vast, costly bowls from Japan, or sipped Madeira a half century old."

Three-fourths of the dwellings in the city gave evidence of the wealth and refinement of the people, while the employment of a French hair dresser, by one lady, at a thousand crowns a year, was but an outcropping of that luxury which made it the home of a gay and haughty circle of giddy voluptuaries and social autocrats. Commerce flourished; its merchants imported goods in ships from every sea, and its enterprising citizens made special effort and offered great inducements for men of every craft to settle in their midst.

Nor was the element of evil wanting in this dwarfed model of a European capital. Youth, beauty, wealth and learning soon chastened the rigors of the primitive virtues of the settlers of the province into the refinements of continental manners. Yet these fascinating and dangerous attractions, while they created a soft and luxurious coterie of mendicants at the feet of social autocracy, did not dominate its true and better character; for, though the fame of its festivities and the grace and beauty of her women who rivaled the charms and manners of the most polished and elegant women of the mother country, was bruited throughout the provinces, it was for its culture that the little city on the Severn was best known in the thirteen colonies.

Though it was true "her pleasures, like those of luxurious and pampered life in all ages, ministered neither to her happiness nor her purity," yet that manliness of character that the English chronicler of its life at this period had noticed, marked the bearing of the humblest of her people, and its citizens, at

the first call of revolution, responded with the highest attributes of enlightened mankind and the loftiest aspirations of unalloyed patriotism.

This picture of Annapolis would want its best and brightest coloring, and the right to its title would be clouded; if it was unwritten that, in this city of pleasure, of legislatures, of courts, of proud men, were the best lawyers of America—the Jenningses, Carrolls, Chalmers, Rogers, Hall, the Dulanys, the Chases and the Johnsons, for almost all of them went in pairs, with father and son at the bar together. Dulany, with his opinions courted by the bench to aid them in elucidating the law, and requested even from the great metropolis of London, dominated them all. From the lawyers sprang the real fame of Annapolis. It was gay, but it halted in its gayety the moment the call for earnest work was made. It was learned—it rose in sacrifice from steep to steep, as the keynote of patriotism sounded for greater and more dangerous enterprises. At every advance the lawyers were in the forefront; they were on the outposts to give warning of danger; their clarion tones were heard calling to battle; they led the conflict.

It was to such a community and in such a city, quick to hear, nervous in thought, cultivated in the highest culture of the colonies, jealous of its rights, used to struggles with the wilderness and their autocratic rulers, that the lawyers of Maryland, of Annapolis—for there, they were gathered—spoke. It is not surprising that these profound polemics in which the lawyers of Maryland engaged produced results that tingled in the very veins of their hearers, and, as they were talked in the ballroom, at the theater, on the race track, at the club house, in the legislature, in their homes, and reverberated in the courts, sent contagious sentiments throughout the American provinces.

There were giants in those days. Towering above his fellows, in intellectual ability, profound legal learning and professional success stood Daniel Dulany, of Daniel.*

*Bench and Bar of Maryland, page 163.

Maryland itself was the reflex of England. Indeed, so closely have the first settlers of this illustrious commonwealth clung to the spirit and principles of their English forefathers that it has been confidently asserted that the people of St. Mary's county, the seat of the settlement of Lord Baltimore's first colony in Maryland, to-day, after the lapse of nearly three centuries, are more like the people of England at the date of the settlement of St. Mary's than are the English people themselves. No branch of the history of Maryland, more than the records of the courts, reflects so distinctly the life and character of the people who settled the "Land of the Sanctuary." Here are the motives that animated the fathers who planted the cross on the shores of Maryland and reclaimed the wilderness to civilization. Their cares, their pleasures, their aims, their possessions, their provisions for their families, their deeds of valor, their petty disputes, their great endeavors—all stand out in the records of the courts, as true and faithful indices of character and conditions; for here the report and the tradition were sifted by the rules of critical proof and legal evidence, and the record was made by unprejudiced scribes, before a scrutinizing court, in the presence of adverse interests, zealous and watchful, to have the docket state the truth only.

The helpful, busy, worthy life of the Maryland settlers, as seen through the telescope of judicial records, displays the colony as the bustling young model of the mother county from which it sprang. Here was the court pypowdry of the great cities of Liverpool and London; here, the court peers and barons that reflected the picturesque tribunals of the lordly barons of the Isle of Liberty; here was the county court mirroring the busy courts *nisi* of York and Devonshire; the provincial court; the shadow of the high court of chancery of England; and then the appeal to the legislature, as the English suitor came, as the court of last resort, to the House of Lords. Here was my lord, "Sir Thomas Gerrard," "my lady of the manor;" the steward of the manor; the seizin by the rod; the stock; the ducking stool; the whipping post; the governor of the provice as the high chancellor of the state; the sovereign lord

proprietary; "his highness lord protector;" our sovereign lord the king; the trial by jury; the writs of right and arrest; the Bible of the Englishman—found returned in almost every inventory; the right to have and possess arms; the voice of the freemen in assembly; his right to levy his own taxes and make his own laws; his duty to quiet his own estate before he died; his jealously of his reputation; his fearlessness in battle; his superiority over trials and environments; his ability to adapt himself to every condition; his respect for women; his love of the chase; his desire to acquire property; his worship of God; his veneration for law and love of order; his penchant for trade and adventure; his merry-making; his love of strong drink, and hatred of drunkenness; the effort of Lord Baltimore to establish in his lords manors a hereditary aristocracy; the military spirit of the freemen; their oaths, pardons, acts of oblivion, seditions and insurrections; the names of the people, towns, rivers, counties and province; all reflect the land from which these sturdy pilgrims came, and who lit up the horizon of national hope with a fresh beam from the torch of liberty—the unfettered right to worship God in that way which to them seemed right.*

If the people of Maryland were similar in their tastes, habits and occupations, to the native born Englishmen, like them, the inhabitants of the Land of Mary were none the less of the same heroic mould in prizing their liberties and in resisting every attempt to encroach upon their sacred rights. They loved the people of England and in common with all the American colonies previous to the passage of the first Stamp Act in 1765, held that they possessed no greater privilege than to be subjects and citizens of the British Empire, entitled to the same rights and proud of the same history that the native born Englishmen themselves enjoyed.

At the time Governor Eden arrived in Annapolis all the American colonies were stirred to their profoundest depths of patriotic concern and resentful indignation over the passage of the second Stamp Act. Associations were being formed in

*Bench and Bar of Maryland, page 60.

various parts of the colonies for the non-importation of British goods—associations to last as long as the Stamp Act remained unrepealed. The kindly and fraternal feeling that had existed between the American people and the British Empire, had been deeply wounded, and it was no longer a mark of distinction in America to be a native born Englishman as Dr. Benjamin Franklin told the Committee of Parliament in 1766 existed in America previous to the passage of the first Stamp Act.

Fifteen days after his arrival on June 20th, Governor Eden saw the first public exhibiton of the spirit of the people over whom he was set as Governor and of their sentiments upon this second attempt to infringe their rights as British-American citizens. On that date committees from the several counties of the province met in Annapolis to form an association for the "Non-importation of British Superfluities in this Province." Previous to this several organizations to effect the same purposes, existed in Annapolis and several of the counties. The Provincial association, after enumerating the various articles that its members agreed not to import, amongst them one very dear to the appetites of the average Marylander of that period —wines—also resolved that no ewe lamb should henceforth be killed. The spirit of the Father of American industry, Daniel Dulany, of Daniel, who in his "Consideration" against the Stamp Act in 1766, proposed an outline of the first system of American manufactures, was working. Maryland was now to do its part in furnishing wool for the teeming looms of the industrial future of America.

At the conclusion of the resolutions of the Provincial association, it was resolved, that if "any person or persons *whatever* shall oppose or contravene the above Resolutions or act in Opposition to the true Spirit and Design thereof, we will consider him, or them, as Enemies to the Liberties of America and treat them on all Occasions with the Contempt they deserve."

Governor Eden had well taken heed to this initial proof of the mind that animated the people of Maryland.

CHAPTER 2.

GOVERNOR EDEN ISSUES HIS PROCLAMATION TO REGULATE AND CONTINUE THE FEES OF PUBLIC OFFICERS.

1770. The Proprietary Government of Maryland had not been an unmixed blessing to the people of that Province. Lord Baltimore and his successors had been instrumental in settling the colony with members of some of the best families of England; the religious freedom of a colony had accentuated the love of liberty amongst the people and the substantial justice rendered each individual in his personal rights, with the products of the soil, the industry of the people and the commerce of the merchants, had created a hardy, intelligent and prosperous colony. Yet, from the first settlement of the colony, the Freemen of Maryland had constant battle with the Proprietary and his representatives to maintain their rights and privileges. At the first lawful assembly, the Legislature of Maryland, the Upper and Lower House sitting as one body, wrung from the unwilling Proprietary the right to initiate Acts of Assembly. He had contended that he alone had the power to propose laws for the government of the colony, and had maintained that the only prerogative of the General Assembly was to assent to, or dissent from, that enactment into statutes. So the Freemen of Maryland were inured to the hardships of fateful controversies with the craftiness of Government officials. So, when the Stamp Act was passed, Maryland was aroused to the highest state of opposition to its provisions. In reviewing the history of this opposition and the maintenance of the principle that there could be no taxation of the American colonies without their consent, McMahon, in his historical view of the government of Maryland, page 329, says: "There is then but little room for rivalry, in contending for the honor

of originating or sustaining this principle; but if there were, there is no colony to which Maryland would yield the palm. The taxation of the crown was excluded, both by the express words of her charter, and the uninterrupted practice of the colony, from the very period of colonization. The taxing power, as granted by the charter, could be exercised 'only by the advice and assent of the freemen, or a majority of them;' and that every possible safeguard might be thrown around this right, it was expressly declared by the law of the province, in 1650: 'That no subsidies, aids, customs, taxes, or impositions, shall be laid, assessed, levied, or imposed, upon the freemen of the province, or their merchandise, goods or chattels, without the consent of the freemen, their deputies, or a majority of them, first had and declared in a General Assembly of the Province.'"

The second Stamp Act, passed July 2, 1767, and repealed April 12, 1770, still retained the duty on tea as a whip over the heads of Americans to remind them of their vassalage to England, and to warn them that their liberties were yet threatened by the King and Parliament of England. The people of Maryland, throughout the counties, were desirous so long as one vestige of the assertion of the right to tax Americans without their consent remained on the statute books of England to continue the association for the non-importation of British goods; but the cupidity of the merchants of Baltimore, following the example of their mercantile brethren in New York, Philadelphia and Boston, who had already abandoned the non-importation articles, brought about internal dissensions, which in the fall of 1770, led to abandonment of the principles of non-importation.

While there came a temporary lull throughout the colonies, generally, in the battle for the cause of no taxation without representation, Maryland was about to begin a contest single-handed and alone for this vital principle of constitutional government.

"In their resistance to the impositions of Parliament," says Mr. McMahon, page 380: "The people of Maryland had hitherto been struggling for the preservation of an abstract principle of liberty, in opposition to their immediate wants and interests. The quantum of these impositions had not even been considered, and they were too limited, both as to their direct objects and their amount, to have produced actual distress by their mere operation. Their oppression consisted, not in the payment of the tax, but in the assertion and establishment of the parliamentary right of taxation. This was one of the remarkable features of that controversy, evincing, more than any other, the general prevalence of rational liberty, and the sagacity of the American people in guarding its outposts. Men must be thoroughly imbued with principles, familiar with their operation, and endowed with intelligence to estimate the danger of remote encroachments upon them, before they will enter into a contest for them, prompted by no actual suffering. Other nations have risen, in the agony of distress, to shake off oppression; the American people stood erect and vigilant, to repel its approach. The internal administration of Maryland now brought up a controversy, in which its people were to renew their combat for the principle they had been sustaining against England, under circumstances bringing it nearer to their immediate interests. The advances upon their rights, now came in the shape of actual oppression, extending its operation to every citizen. This controversy related to what were familiarly called 'the proclamation and the vestry act questions.' From this period until the commencement of the revolution, all other subjects gave place to these engrossing topics. They elicited more feeling, and greater displays of talent and research, than any other question of internal polity, which had ever agitated the colony."

It has been remarked, that "the General Assembly of Maryland at all times retained its control over the offiers of the province by its right to regulate their compensation for official services: and that the fees of office were not only fixed by law, but also determined by temporary acts of short duration, upon

the expiration of which the Assembly could withhold or reduce them at pleasure. One of these acts, passed in the year 1763, had been continued, from time to time, until October, 1770: and was again renewed at the session of 1770. The system of official compensation established by that act, was that which had been used in the colony from a very early period. There were no salaries; but the officers were allowed definite fees for each act, or service. These fees, as well as the public dues and the taxes for the support of the established clergy, were sent out each year to the sheriffs of the counties for collection. A particular period in every year was assigned, within which the lists of fees were to be delivered to the sheriff, and by him to the party charged for voluntary payment. If that period was suffered to elapse, the sheriff was required to levy by process of execution, and to account for them to the officers within another fixed period. Such were the general features of this system of collection, which we will have occasion to examine more thoroughly hereafter. To the details of the act of 1763, now coming up for re-enactment, many objections were made by the lower house: but so far as they related to the essential parts of the controversy about officers' fees alone, they consisted in the exorbitance of the fees connected with some of the principal offices, the abuses to the mode of charging, and the want of a proper system of commutation." The principal complaints about the exorbitance of the fees, related to those of the provincial secretary, the commissary general, and the judges of the land office, and from the reports of that period, which enable us to determine the average annual receipts of those offices for several years previous, these complaints appear to have been justly founded. By a number of our citizens, the fees and salaries of the state offices, at a late period were considered excessive. Yet there was no office in the Province whose emoluments can be considered equal to those of any one of the above-mentioned offices, during the pendency of this controversy. The receipts of the secretary's office, for the seven successive years, from 1763 to 1769 inclusive, were 1,562,862 lbs. of tobacco: and the average

annual receipts 223,266 lbs. of tobacco. The annual average value of his fees in the Chancery Court during the same period was 39,326 lbs. of tobacco. His annual receipts from these two sources were therefore 262,592 lbs. of tobacco; or, according to the rate of commutation at that day, 4,376 dollars. The fees of the land office, during the same period, yielded 2,850,934 lbs. of tobacco, or annually, on an average, 407,276 lbs. or 6,876 dollars; and those of the commissary's office, annually, 235,428 lbs. of tobacco, or 3,923 dollars. The alleged abuses arose principally from a practice, not peculiar to that day, of dividing the one service into several other enumerated services, with a view to the several fees. The commutation privilege of the act of 1763, was objected, as not sufficiently extensive. Tobacco was still the currency of the province. Officers' fees, and all public dues, were rated in it: and the right to pay these in tobacco, was, at first, considered a high privilege. To avoid the fluctuations in value, to which such a currency was necessarily subject, it obtained by law, a fixed specie value; and in certain cases, the specie was made receivable, in lieu of it, at the rate so fixed. The right to pay in specie, the Lower House desired to extend to all persons within the period allowed for voluntary payment. Although several of the propositions, growing out of these objections, were at first resisted by the Upper House, it seems probable from the tenor of its messages, that it would ultimately have yielded to all but that to reduce the fees. Here, however, was a source of uncompromising disagreement between the two houses.

The opposition in the Upper House unfortunately for it, was led by those members of that body who were directly interested against the reduction of fees. Daniel Dulany, of Daniel, was the provincial secretary; Walter Dulany, the commissary general; Benedict Calvert, and George Steuart, were judges and registers of the land office. These four were all councillors for the Governor and by virtue of that office, were members of the Upper House. Their opposition was, therefore, believed to be a support of their own private interests as

against the public good. All efforts to harmonize differences between the two houses, failed. After many bitter discussions, Governor Eden finally prorogued the Assembly, and the province was left without any regulation of the fees of public officers and, also, without any public system for the inspection of tobacco.

Governor Eden resolved to take upon himself, under the prorogatives of his office, the regulation of public fees, and for that purpose, issued on the 26th of November, 1770, this proclamation:

A Proclamation.

"Being desirous to prevent any Oppression and Extortion from being committed under Colour of Office by any of the Officers and Ministers of this Province and every of them their Duputies or Substitutes in exacting unwarrantable and excessive Fees from the Good People thereof I have thought it fit with the Advice of his Lordship's Council of State to issue this my Proclamation and do thereon hereby order and Direct that from and after the Publication hereof no Officer or Officers (the Judges of the Land Office excepted who are subject to other regulations to them given in charge) their Deputies or Substitutes by Reason or Colour of his or their Office or Offices have, receive, demand or take of any person or persons directly or indirectly any other or greater Fees than by an Act of Assembly of this Province entitled "An Act for Amending the Staple of Tobacco for preventing Frauds in his Majesty's Customs and for the Limitation of Officer's fees" made and passed at a Session of Assembly began and held at the City of Annapolis on Tuesday the Fourth Day of October Seventeen Hundred and sixty three "were limited and allowed" or take and receive of any person or Persons an immediate Payment in Case Payment shall be made in Money any larger Forfeit after the Rate of twelve Shillings and six Pence Commission Current Money for One Hundred Pounds of Tobacco under the pain of my Displeasure. And to the intent that all persons concerned may have due Notice thereof I do strictly

charge and require the Sheriff of the City of Annapolis to make this my proclamation publick in the said City as he will answer the contrary at his Peril. Given at the City of Annapolis this 26th Day of November in the twentieth Year of His Lordship's Dominion Anno Domino 1770.

Signed by Order

U. Scott,
Ch. Clerk."

Robert Eden. { The Great Seal. }

It will be thus seen that the avowed object was to prevent abuses and extortions on the part of public officers. Its real purpose—to lay a tax in the nature of public fees upon the freemen of Maryland without their consent—was too apparent to deceive even its own friends. The time of issuing was most unfortunate for the Governor and his supporters. Never was a public measure more unadvised. Although this prerogative had been exercised by former Governors, it had never received the united approval of the people of Maryland. Aroused, as the people were over the Stamp Act of Parliament and bending under the heavy burden of excessive fees, and determined to defend their liberties to the utmost limit of their constitutional powers, the proclamation fell as a fire brand in tinder amongst the people of Maryland. The weight of early precedent was against the Governor's proclamation. Public sentiment was almost entirely opposed to it, and, "in the general opinion, there was no charter power under which it could be sheltered. In the present instance, it defeated all the purposes of the Lower House, by adopting the same system which they had refused to sanction. It was, therefore, in general estimation, a measure of arbitrary prerogative, usurping the very right of taxation which the colony had been so long defending against the usurpations of Parliament. If the Governor had doubted about the reception of such a measure, there was enough to warn him, in some of the transactions of the Assembly, immediately before its adjournment. Whilst the fee bill was under discussion, and after the law of

1763 had expired, the judges of the land office, treating that office as the private institution of the proprietary, instructed their clerk to charge and secure the fees agreeably to the provisions of the expired law. A case, in which these instructions were followed, was at once brought to the notice of the Lower House; by whose order, the clerk was taken into custody and committed to prison. To effect his release, the Governor prorogued the Assembly for a few days. This interference elicited from the Lower House, upon its re-assemblage, an angry remonstrance, containing an expression of public sentiment not to be misunderstood. 'The proprietor, (they remark), has no right, either by himself, or with the advice of his council, to establish or regulate the fees of office; and could we persuade ourselves, that you could possibly entertain a different opinion, we should be bold to tell your excellency, that the people of this province ever will oppose the usurpation of such right.' In venturing upon such a power, after such an admonition, the Governor therefore sinned against light and knowledge: and his measure shared the usual fate of those which set at naught the opinions, and sport with the liberties of a free and intelligent people."

The members of the Lower House of the General Assembly of Maryland which convened on Tuesday the 25th day of September, 1770, were as follows:

St. Mary's County, John Eden, William Thomas; Kent, Thomas Ringgold, Stephen Bordley, Richard Graham; Anne Arundel County, Samuel Chase, Brice Thomas, Beale Worthington, Thomas Johnson, Jr., Henry Griffith; Calvert County, Benjamin Marshall 4th, Edward Gantt, Young Parran, Charles Graham; Charles, Francis Ware, Joseph Hanson Harrison; Somerset, Levin Gale; Talbot, John Goldsborough, Matthew Tilghman, Nicholas Thomas; Dorchester, Henry Hooper, Henry Steele, Edward Mace; Cecil, William Ward; City of Annapolis, John Hall, William Paca; Prince George's, Robert Tyler, Mordecai Jacob; Worcester, Joseph Dashiell; Frederick, William Luckett.

A direct test vote of the strength of the two parties for and against the government is not to be found in the proceedings of the Lower House of 1770, but on a question, "that leave be given to bring in a bill, entitled An Act to continue the Act, entitled an Act for amending the Staple of Tobacco for preventing Frauds in his Majesty's Customs, and for the limitation of Officers' Fees, and the Supplementary Act thereto. The motion was put, Whether That Question be not put?"

"*Resolved*, That, The Question be now put."

The vote was—

For putting the Question—Messrs. Gantt, Grahame, Hayward, Gale, Dickenson, Goldsborough, Sullivane, Hooper, Steele, Hall, E. Tilghman, Hollyday, Allen, Selby, Purnell, Wilson, J. Dashiell, M. Tilghman, N. T. Thomas, Veazey, Ware—21

Against putting the Question—Messrs. Eden, Ringgold, Bordley, Graham, Worthington, Johnson, Griffith, Chase, Ward, Harrington, Beall, Tyler, Luckett—13.

The thirteen votes, apparently, represent the element radically opposed to all compromise with the Governor on the question of fees, resolved to let the whole matter fall into greater confusion than that which existed, and thus make the situation, by its legislative chaos, nearer solution in favor of a reduction.

CHAPTER 3.

THE SESSION OF 1771 AND PROROGATIONS OF 1772.

1771-1772. The members who composed the Lower House of the Assembly of October Session of 1770 were: St. Mary's, John Eden, William Thomas; Kent, Thomas Ringgold, Stephen Bordley, Richard Graham; Anne Arundel, Samuel Chase, Brice Thomas, Beale Worthington, Thomas Jenifer, Jr., Henry Griffith; Calvert, Benjamin Mackall 4th., Edmund Gantt, Young Parran, Charles Graham; Charles, Francis Ware, Joseph Hanson Harrison; Somerset, Levin Gale; Talbot, John Goldsborough, Matthew Tilghman, Nicholas Thomas; Dorchester, Henry Hooper, Henry Steele, Edmund Nace; Cecil, William Ward; City of Annapolis, John Hall, William Paca; Prince George's, Robert Tyler, Mordacai Jacob; Queen Anne's, Edward Tilghman, Thomas Wright; Worcester, Joseph Dashiell; Frederick, William Luckett.

Three days after the Assembly met the Lower House appointed a committee for the purpose of bringing in a bill "for amending the staple of tobacco, for preventing frauds in His Majesty's customs and for the limitation of officer's fees." This is the bill on which the whole controversy centered. October 13th the committee reported a bill which made a considerable reduction in the fees of some of the Provincial officers and allowed a compensation in money in all cases, and, on October 17th, the Lower House passed it and it was sent to the Upper House. After five days that body returned the bill and refused to concur in the changes in the existing law. This precipitated the issue. The Lower House passed resolutions reaffirming the action of that same body in a similar dispute in the years 1733, 1735 and 1739, and declaring that "the Representatives of the Freemen of the Colonies have the

sole right to establish fees of officers, and fees charged by the Lord Proprietary are arbitrary, unconstitutional and oppressive." The relations between Governor and Lower House were still further strained by the event referred to before which took place on November the first—the arrest and confinement in jail of William Steuart, clerk of the Land Office. He had presumed to transact the business of the Land Office as if the former Act was still in force. For this offense the Lower House, acting as the grand inquest of the Province, ordered his arrest, and directed that he be confined during the session of that body. Governor Eden, we have seen, prorogued the legislature for three days, which effected Steuart's release.

Then followed some fruitless efforts on the part of the two Houses to reach common ground on the matter of the regulation of fees, and, on November 26, Governor Eden, after finding compromise impossible, finally prorogued the General Assembly.

Then followed the proclamation noted in the preceding chapter.

The Legislature for the session of 1771 met on October 2d. The Lower House was constituted as follows:

St. Mary's County, John Reeder, Jr., William Thomas, Jeremiah Jordan; Anne Arundel, Brice Thomas, Beale Worthington, Thomas Johnson, Jr., Samuel Chase; Calvert, Benjamin Marshall 4th, Young Parran, John Weems; Charles, Joseph Hanson Harrison, Josias Hawkins; Dorchester, William Richardson, William Edmonds, Joseph Richardson; Baltimore, Samuel Owings, Jr., John Moale, George Risteau, Thomas Cockey Deye; Cecil, John Veazey, Benjamin Rumsey, William Baxter; Prince George's, Josiah Beall, Robert Tyler, Thomas Contee; City of Annapolis, William Paca; Talbot, James Lloyd Chamberlain, Matthias Tilghman, Nicholas Thomas, Edward Lloyd; Queen Anne's, Edward Tilghman, Richard Tilghman Earle; Worcester, Nathaniel Holland; Frederick, William Luckett, Jonathan Hager, Thomas Sprigg Wooten, Charles Beatty. The address in which Governor Eden opened

the session contained no reference to the bone of contention, there being no word in regard to either his proclamation or the inspection law. The Lower House, however, was not willing to let the matter rest here. If that had been done, public officials would have gone on deriving their incomes under the proclamation, and Governor Eden would have won his point against the people's right as understood by the Lower House. The opinion of that body was indicated on October 10th, when the committee on Aggrievances reported that the fees now collected for public purposes, besides being "excessive, great and oppressive," were "under no regulation of any law of this Province." The Lower House immediately appointed a committee to bring in a bill with the now well-known title of an Act "for amending the staple of tobacco, for preventing frauds in His Majesty's customs and for the limitation of officer's fees." This was another event in the yet unsettled warfare between the proprietary government and the people of Maryland, for the committee lost no time, but introduced the bill on October 14th, and on the 18th the bill was passed.

The bill as usual, failed of passage in the Upper House, and the Lower House, anxious that, at least, there should be no doubt as to its position on the matter began to pass resolutions. The first resolution treated the contention from an entirely public standpoint and was passed on the 18th. It was as follows:

"*Resolved*, That the Representatives of the Freeman of this Province have the sole Right, with the Assistance of the other part of the Legislature, to impose or establish Taxes or Fees, and that the imposing, establishing or collecting any Taxes or Fees * * * under Colour or Petense of any Proclamation, is arbitrary, unconstitutional and oppressive." The other resolution took a very personal turn, notwithstanding the fact that up to that time the relations between Governor Eden and the members of the Lower House had been personally cordial. It was short and to the point, as follows: "*Resolved*, That the

Advisers of the Proclamation are the Enemies to the Peace, Welfare, and Happiness of this Colony and the Laws and Constitution thereof." The members of the Lower House made a great point of claiming that the Governor was not alone in his action, but that there were those behind him whose identity they were anxious to discover. The vote in favor of this resolution was practically unanimous, and was as follows: In the affirmative—Messrs. Jordan, Grahame, Johnson, Chase, Marshall, Parran, Weems, Harrison, Smallwood, Handy, Dennis, J. Richardson, Moale, Risteau, Deye, Veazey, Baxter, Ward, Beall, Tyler, Canter, Paca, Tilghman, Earle, T. Wright, S. Wright, Holland, Chille, Robins, Allan, Wootten and Beatty. Those in the negative were Messers. Richardson, Edmonds and Hall.

On November 22d, the Governor was addressed in a courteous but determined petition, in which he was asked to name those who were his advisors in issuing the proclamation. It was now found impossible for the Assembly to transact any further Legislative business. The members spent the remaining time in passing resolutions condemnatory of the proclamations and in bitter communications and conferences between the Upper and Lower House.

Governor Eden, however, was an able defender of his side of the controversy. On November 29, 1771, he addressed the Lower House a letter which contained a stinging reprimand for their comments on the proclamation. He takes the ground that the members are attempting to stir up popular discontent. He says: "The sentiments you have expressed against my preclamation have proceeded from your persuasion of it having been calculated to prevent litigation and secure the public peace, and your apprehension if left to its proper effect, would extinguish the discontent you take so much pains to kindle." The Governor goes further. He charges the House and its Speaker with a number of unlawful actions, some connected with and others having no reference to the disputed subject. He was particularly severe with the Lower House

for their action in arresting William Stewart, the clerk of the Land Office, and characterizes it as the conduct of a highwayman. Governor Eden then very courageously states that none but himself was responsible for the proclamation, as he had no advisors whatever. He stated, besides, that the position of the Lower House is insincere, as they claim that fees should be collected in an ordinary action at law, whereas the lowest amount thus collectible was much larger than the ordinary fees of office.

The Governor next went into a historical argument in justification of his position. He claimed that all the offices were the private right of the Proprietary except the Land Office, which he admits to be of a quasi-public nature. The proclamation, he says, was written only after the most mature considertion. In conclusion Governor Eden says: "So clear is my conviction of the propriety and utility of a regulation to prevent extortion and infinite litigation that, instead of recalling it, if it was necessary to enforce it, I should renew my proclamation, and, in stronger terms, threaten all officers with my displeasure who shall presume to ask or receive of the people any fee beyond my instructions." The next day Governor Eden prorogued the Assembly until February 18th. He made a speech to the Assembly on the last day of its session, and complained of the vast loss of time to themselves, and the expense of money to the country which had accrued this session, and the very little business that has been done at it. He further told the Assembly that the excited treatment of the proclamation was due to the wrong idea that they had acquired over that document, which was issued solely for the benefit of the people of the Province and so understood by most of them. Early in 1772 the Governor prorogued the Assembly again, and so with several other prorogations 1772 expired without a meeting of the Legislature.

The next meeting of the General Assembly was not until June 15, 1773, a period of nearly two years. In the meantime the people either paid fees under protest, according to the old law, or refused absolutely to pay them. There was little to

support Governor Eden's claim that most of the people understood the proclamation to be in their interest, or, at least, they did not consider it to be for their benefit to the extent of making them willing to pay the fees. It seems, however, that in most instances fees were collected according to Governor Eden's way of thinking, and that the popular idea of a collection by an action at law was seldom if ever, put into practice. The issue was clearly drawn. The people of the Province, through their representatives in the Lower House of the General Assembly, held that that body had the sole right to regulate the fees of all public offices, as they were subservient to the public and created for their interest in the first place. The claim of the Proprietary, represented by Governor Eden, was that the offices, with the exception of the Land Office, which was in a degree excepted, were to be used for the private benefit of the Proprietary, did not find many supporters. Both sides were sincere, open and courageous in the controversy. It was Maryland's phase of that great question of popular rights against the usurpations of arbitrary authority, which was soon to cast the Thirteen Colonies into war with the mother country.

CHAPTER 4.

TWO GLADIATORS.

1773. Whilst these acrimonious proceedings between the Governor and his Council and the Lower House of the Legislature were in progress, the people of the Province grew more and more restive under the attempt of the Governor to lay taxes upon them without the authority of the House of Delegates, for these fees were only another name for taxes as a large part of the business of the Province of the most important character, could not be transacted without paying them, or, if refused, payment could be insisted through the sheriff at once by a sale of the delinquent's property. It was an axiom among Marylanders that their property could not be lawfully taken from them without their consent or the consent of their representatives. No measure of public import was ever so wisely discussed. From the Freemen of Maryland it went to the people; from the people to the press; from the press to the polls; and from the polls back to the Legislature again. The epoch became one of the most important in Maryland's interesting history.

"Political parties were formed along the alignment of approval of, or opposition to, the proclamation. They were suggestive arrays. On the one side were the governor; his council; the established clergy, interested that, by another proclamation, their fees had been raised from thirty to forty pounds of tobacco per poll on the taxables of the Provinces; the courtiers of the Governor, and the office-holders; on the other the great body of the people and the lawyers, John Hammond and Daniel Dulany alone excepted. This devotion to the cause of the people was unselfish and costly. From the almost royal Proprietary came the highest official positions, the judicial places, with dignities and emoluments of

varied and lucrative character. These positions represented social status as well as official honors and rewards. The people had little to give, and yet, when the doubtful and dangerous struggle came, the lawyers of Maryland surged to the forefront at the first sound of contest (Bench and Bar of Maryland, page 125) on the side of the people." Two clergymen alone in the whole Province opposed the proclamation.

Forced, finally, by the insistent events environing him, Governor Eden had to abandon the makeshift of prorouging the Legislature and of filling vacancies in the Lower House by special warrants of election, and dissolved the Assembly and appealed to the people by a general election for a new body of representatives in the Lower House. The election was ordered for May 20, 1773. From the beginning of the year down to the period of election, the *Maryland Gazette*, the single journal of the Province, was filled with the most bitter and interesting correspondence upon the proclamation and the vestry Act. The lawyers, by their magnanimous conduct and able leadership of the cause of the people, became the subject of general and personal abuse from the official party. For four months the *Gazette* teemed with communications on either side of the question. Second only in importance to the greater correspondence was that of Thomas Johnson, Samuel Chase and William Paca against the Governor's position on the vestry question, and the Rev. Jonathan Boucher, rector of St. Anne's, in upholding the executive. Mr. Boucher displayed extraordinary talents in research, originality and powers of invective. In minor notes on the general question were "A Client," Freeholders of St. Anne's," "A Protestant Whig," "A Tailor," "A Planter," "Plain Truth," "Patuxent," "A True Patriot," "Amicus Patriæ," "An Eastern Shore Clergyman," "Lawyer," "Clericus," "Twitch," "Office Holder," "Brutus," "A Protestant Planter" and "Tradesman," and "An Independent Whig." The Whigs were the supporters of the Governor. As usual, with the opposition, the Maryland opponents of Governor Eden's proclamation were designated, "Tories."

Rising pyramidal above all the minor notes came the letters of First Citizen and Antilon—a correspondence that created the intensest interest throughout the colony, and won for one of the writers the gratitude of the people of Maryland, and became national in its history.

Daniel Dulany, Jr., also known as Daniel Dulany, of Daniel, was born at Annapolis, July 19, 1721, and was educated at Eton and at Clare Hall, Cambridge. He entered the Temple, and, returning to the colonies, was admitted to the bar in 1747. To him the profound and brilliant McMahon pays this glowing tribute: "For many years, before the downfall of the Proprietary government, he stood confessedly without a rival in this colony, as a lawyer, a scholar and an orator, and we may safely regard the assertion that, in the high and varied accomplishments which constitute these, he had amongst these sons of Maryland but one equal and no superior. We admit that tradition is a magnifier, and that men even, through its medium and the obscurity of a half century, like objects in a misty morning, loom largely in the distance; yet, with regard to Mr. Dulany, there is no room for illusion. 'You may tell Hercules by his foot,' says the proverb; and this truth is as just when applied to the proportions of the name as to those of the body. The legal arguments and opinions of Mr. Dulany that yet remain to us bear the impress of abilities too commanding, and of learning too profound, to admit of question. Had we but these fragments, like the remains of splendor which linger around some of the ruins of antiquity, they would be enough for admiration. Yet they fall very short of furnishing just conceptions of the character and accomplishments of his mind. We have attestations of these in the testimony of contemporaries. For many years before the Revolution, he was regarded as an oracle of the law. It was the constant practice of the courts of the Province to submit to his opinion every question of difficulty which came before them, and so infallible were his opinions considered that he who hoped to reverse them was regarded as 'hoping against hope.' Nor was his professional reputation limited to the colony. I have

been credibly informed that he was occasionally consulted from England upon questions of magnitude, and that, in the southern counties of Virginia adjacent to Maryland, it was not infrequent to withdraw questions from their courts and even from the Chancellor of England to submit them to his award. Thus unrivalled in professional learning, according to the representations of his contemporaries, he added to it all the power of the orator, the accomplishments of the scholar, the graces of the person, the suavity of the gentlemen. Mr. Pinkney himself, the wonder of his age, who saw but the setting splendor of Mr. Dulany's talents, is reputed to have said of him that even amongst such men as Fox, Pitt and Sheridan he had not found his superior."

Charles Carroll, of Carrollton, destined to meet the most learned and distinguished man in America in the gladiatorial field of forensic and political discussion, while these animated debates and exciting controversies were in progress, lived in Annapolis where he was born September 20, 1737. In 1745, he was taken to the College of English Jesuits at St. Olmer, France, where he remained six years, and then was sent to the Jesuit College, at Rheims. After one year's study of the civil law at Bourges, he went to Paris, studied two more years, and began the law in the temple. At 27 years of age, he returned to America, and at the breaking out of the Revolutionary War, was worth $2,000,000.

Though the richest man in America, learned in the law, polished with the latest culture of Europe, an upright citizen, and an ardent patriot, Charles Carroll, of Carrollton, was not permitted to vote at any election, municipal or provincial, because he was a member of the Roman Catholic Church, for, at this period, while Roman Catholics were permitted to hold high lucrative and responsible offices, all were disfranchised under the intolerant spirit that permeated the English statutes and which had inspired the penal laws of Maryland, now under Protestant rule, a province which under Catholic had been first in the "wide, wide world" to raise the banner of perfect civil and religious liberty.

CHAPTER 5.

DULANY'S FIRST LETTER APPEARS IN THE MARYLAND GAZETTE.

1773. On Thursday, January 7, 1773, Dulany's first communication appeared in the *Maryland Gazette*, printed in Annapolis. The "dialogue" came suddenly like a meteor from a star-lit sky, and flashed with such brilliancy amongst the constellation of lesser lights that it completely obscured their milder rays. The communication in full was:

"You will be pleased to give a place in your *Gazette* to the following dialogue, which was set down by a gentleman who overheard it, after a small recollection, perfectly in substance and nearly in words, as it fell from the speakers. The unhappy and prevailing aversion to *read* performances of elegance as well as moment to the publick seems to bode that this so deficient in the first point will not find a multitude of readers—But if I am not grossly mistaken, those few who will not be frightened by its length from travelling through it will receive both entertainment and instruction to requite them, in some degree, for their pains.

A Dialogue between two Citizens.

"1st Cit. What, my old friend! still deaf to the voice of Reason? Will fair argument make no impression on you? Consider well the irreparable mischief the part you are going to act, may do to the Cause of Freedom: Your Steadiness, your Integrity, your Independence made us set you down, as a sure Enemy to Government, and one too, whose force would be felt.

"2d. Cit. Let me repeat to you my caution, against this strain of compliment; it suits not with your professions of

OPPOSITION, and is in truth, somewhat too courtly for my palate: But of this however you may rest assured, that no man is more open to conviction, than MYSELF. The publication of the opinionist, which you, with much zeal and devotion, would set up as the only rule of faith, has let in new light upon my mind. I worship not the GOLDEN CALF; but cleave to the religious rights and ceremonies established by my forefathers; and in this, I think, I am both conscientious and politick. It was for the same despicable idolatry and falling off as yours that the unhappy and misguided king *Jeroboam* and his people were afflicted with those mighty evils, which are recorded in holy writ. 1 Kings, xii. 2 Chron. xiii. I have impartially examined everything you suggested in our last conversation, but, cannot discover therein, the least semblance either of reason, or argument; and until you press me with some more weighty objections, I shall still continue a cordial, and determined friend to Government, and, under favour, to Liberty too: But, in the name of Common Sense, no more fruitless experiments on my passions; a truce to your threadbare topics of Arbitrary Princes, Proclamations, and your forty per poll! You pretend at least, to be so haunted with these terrors, that I verily believe in my heart, if it were in my power, to produce the opinions of the greatest Counsel in England, upon a full and fair state of the case, point blank in favor both of the Proclamation and Forty per poll, you would swear that they were forgeries; or if you allowed them to be genuine, that their authors were barefaced knavish Lawyers, who would at any time, sell opinions contrary to their consciences, to serve a present turn, to get an office on this side the water, for some importunate dependent, or relation in the fourth or fifth degree; or that they would do it to support power, and very likely, that they were downright blunderbusses:

"And this, too, would be all *fair argument.*

"1st Cit. I say nothing upon that matter for the present, but let such opinions appear when they will, there shall be those which shall confront them, though they come subscribed

with the name of CAMDEN, if that could possibly be.* But you declare yourself a determined friend both to Government, and Liberty. Monstrous contradiction! If this, however, be your final resolve, I am really very sorry for it; Government has but too many, and too powerful friends already; the current sets so fatally strong that way, as to give us serious cause to dread, that we shall be overborn in all our struggles to resist it; the friends of the Constitution, with whatever cheerfulness they may affect to gild their countenances, wear a certain sadness about their hearts; they see the strongest symptoms of the sickness of their cause, even unto death; Court-influence, and Corruption, rear their glittering crests.

"2d Cit. Court-influence and Corruption! But, my flowery antagonist, is every man who thinks differently from you on public measures, influenced, and corrupted? Now, I must confess you give me no reason to complain of your over-complaisance. Is the majority of your fellow-citizens, which you seem to apprehend will be against you, thus all blotched and tainted?

"1st. Cit. God forbid it should BE THE CASE OF EVERY INDIVIDUAL! but alas! it is so of too many. Your conduct, and the conduct of such as you, we rather incline to impute to the irresistible bias of personal attachment, or to a certain unaccountable infatuation, which will sometimes overtake the wisest, and the best.

"2d. Cit. Your insinuation is too gross and injurious to be qualified, or atoned for, by this apology of yours; it will not

*Here it is difficult to determine the speaker's meaning. He may either intend that Lord Camden, after having been a judge and otherwise dignified, can no longer give opinions as a practicing lawyer; or that if he could, he cannot possibly differ from our own great lawyers. And in this latter presumption he may think himself warranted by his Lordship's sentiments, which are cited in that fine monument of reasoning and literature, the Address of the Lower House; which may be seen in the Votes and Proceedings of 1771, page 66; which citation it is well worth reviewing and comparing with another of the sentiments of the same light and ornament of the present age, page 86.

pass upon one of MY STEADINESS *you know*. You would brand every man with the odious appellations of Court-hireling and Sycophant, who dares to exercise his own judgment, in opposition to yours, and that of your party. Is it not the most criminal, and unpardonable arrogance, thus to strike at the public reputation? I know not what, or whom you mean, by *We* and *the friends of the Constitution:* but, whilst you are thus wrongheaded, and breathe so imperious and tyranical a spirit withal, you will be the constant object of derision, or hatred; you may upbraid with the epithets of Tool, or Courtier (than which nothing can be more foul, or reproachful), you will still be regarded with the scorn, or pity of every man of sense and spirit; the blessings of Order, will still be preferred to the horrors of Anarchy; for to such must the principles of those men inevitably lead, who are fixed in their purpose, of opposing Government at all adventures, and preposterously contend, that such a system is neither interest, nor faction, but genuine patriotism. Alas Sir! ill must it fare with the popular interests, when the Leading Representatives, and Great Speakers, instead of making amends to their country, by some master stroke of wise policy, for having rejected a regulation offered upon such advantageous terms, as the most sanguine, and staunch friend of the people, never dreamed of; still rush on in their destructive career, laying their trains at each outset of public business, to blow up everything into a combustion, in order, that the rage and delusion of the present, may support and sanctify the mischiefs of the preceding Session: whilst the public debt, without purchasing any benefits, is swelling to an enormous size, on the Journals; our staple falling into disgrace in foreign markets; and every man's property in a degree, decreasing and mouldering away. Friends to the Constitution, whilst they are stretching every sinew to confound all the public counsels, and thereby, destroy every good effect of that Constitution. Gracious powers! *is not this a monstrous contradiction?*

"Take a liberal and impartial review of your adversaries, in every point of light: Have not they as deep a stake in the

safety of the Constitution as you, or your friends? What can possibly tempt them to join in the demolition of that bulwark, which alone shelters them in the enjoyment of their fortunes, and of every comfort that can plead to the reason, and interest the heart of man? If they are Tools and Hirelings for this purpose, then are they a kind of lunatic wretches, that no language can describe. Will the general behavior of none of them authorize you to entertain more honorable sentiments of their spirit, than you express? Would they not, think you, spurn at an attempt to frighten, or bribe them, with indignation equal to that which would fire the breasts of those, who are eternally carrying out as if the enemy were in the gate, and scattering distraction and distrust through the community? Who are forever reviling others, and bepraising their own integrity, wisdom, and I know not what? Lay this truth sadly to heart, Sir, the Politician who stuns you with harangues on his own angelical purity, is as certainly an arrant imposter, as the woman who unceasingly prates of her own chastity, is no better than she should be; or the soldier who is always the hero of his own boisterous tale, is at bottom but a rank coward. Are there among them no substantial merchants, who are much likelier to be gainers by sticking close to their own business, than by watching the smiles or frowns of a Court? These are men, whom I should hardly expect to find in a plot against Liberty; since Commerce is ever engrafted on the stock of Liberty, and must feel every wound that is given to it, for when Liberty is struck to the heart, Commerce can then put forth her golden fruit no more; but, must perforce droop and die. Do you conceive, that such men can possibly be hired, unless they be overtaken by the *infatuation* you talked of, to engage in pulling down a fair and stately and useful edifice, with the ruins of which, as soon as it is leveled to the ground, they and their families are to be stoned to death? For, they are not entitled, by their mercantile education, to keep a constant eye upon the great and gainful public offices, or to expect that any of them will fall to their share, as those of some other professions are. In all growing cities,

and communities at large, they are especial useful and able members, when acting in concert with the Commons, but, put them into the other scale, and they that instant lose all their weight. I fancy you will hear many of my brother-mechanics raising their voices against you, who scarce know the meaning of your Court-influence, and Corruption, who will stand on the side of him, whom they think, from an unprejudiced observation of his manners, the likeliest to shield them from oppression; or it may be, the encrease of whose business, as it is closely connected with the prosperity of the city, bids the fairest to enlarge the sphere of action, and importance, not only of every tradesman, but, of every inhabitant who lives by his labor, and the sweat of his brow.

"1st. Cit. To these questions I do not choose to give an answer. But, thus much I will venture to assert, that a thousand arguments may be brought to prove, that our LEADERS cannot be either mistaken, or dishonest. I will only mention two, which are abundantly sufficient. First, the clear and undeniable consistency of their public conduct; and secondly, their noble and uniform abhorrence of being seen at Court, or in the infectious company of Courtiers.

"2d Cit. Consistency, according to your meaning of it, may be now and then the sign of a good heart, but it never is of a good head. It is evident to a man of *my* plain understanding, that a wise politician, if he cannot steer due on to his point, will shape his course a different way, and win upon it by degrees, and yet be both firm and consistent. He will never scruple to give up trifles; to gain solid advantages. But, the possession even of this consistency, when it is appealed to as a merit, must undergo a severe scrutiny. I am somewhat advanced in life, you know; and easiness to believe, is a plant of slow growth, in an aged bosom. A man must not pretend to reconcile his conduct with consistency, by deceitful refinements; it will not serve his turn to tell me, that he acts in two different characters, when I find him declaring one thing today, and another tomorrow, on some public and important question; or, when I hear him pronouncing that certain bodies

of men have peculiar and indubitable rights, at the very time he is moving heaven and earth to destroy the only Law, which is the foundation of those rights. Neither must this uniform abhorrence of Courts; this excessive delicacy in the choice of company, be received on the mere assertion of the party. When a Candidate, or his friends, warn me of the danger of trusting a man who associates with such and such particular persons, whom they are pleased to traduce as Courtiers and Place-hunters; or who happen to dine at Court, now and then, I am not pained, or difficulted to ask them, whether, they cannot recollect the time, when they themselves were guilty of this very crime? or when they were even the common objects of ridicule, for being *hand and glove at Court*, as it were, *all of a sudden?* Whether, they have not been so bit, so intoxicated, as to forget the old proverb, that *walls have ears*, and to break out into boasts and raptures at their brightening and unexpected hopes of preferment? If I can catch them tripping, or prevaricating upon this trial, they cannot be angry with me upon the matter, if I conclude, that their patriotism is all a cheat, and that in fact, disappointment is rankling in their hearts, nay that, notwithstanding their old sores, if the bait were again thrown out to them, they would be such gudgeons as to swallow it with the utmost greediness.

"1st. Cit. However this feigned trial of yours might turn out, I cannot see how my friends would be affected by it; as it is notorious to the whole city, as well as to the whole province, that no part of their conduct can possibly fall within the description.

"2d. Cit. GOD FORBID IT SHOULD BE THE CASE OF EVERY INDIVIDUAL! or indeed of any of them. But to pursue my train: If I can tell them with truth, that I have not only been one of those, who have stared with astonishment at their childish and unguarded Court familiarities even in the public streets, but that I can recount to them their courtly voyages by water, and journeys by land, their carousings, their illuminations, their costly and exquisite treats, to gorge the high-seasoned

appetite of Government; if I can name the very appointments they have laid their fingers upon, and assure them, that I have been well informed of their eager impatience for the removal of every impediment, which stood in the way of their exaltation, with many other glorious and patriotic particulars; if—

"1st. Cit. For Heaven's sake, to what purpose is all this idle talk? You well know, it does not touch us, we are not galled, and therefore cannot wince.

"2d. Cit. I shall push it no further then. I only meant to shew you the rules I lay down to myself, for judging on these occasions; and in this, no creature can accuse me, either of ill nature, or foul play; for, I would by no means confine the man of my choice to any particular set of acquaintance. If he has a relish for society, I like him the better for it; since it proves he has a generous heart. I think he may spend his hours of relaxation in the company of sensible persons, though they chance to differ with him in their political creed, and yet return to his own parlor, the same hearty and unshaken friend to his old public opinions as ever. I never tremble on this account. Indeed, if I be rightly informed, the conversation of these kind of people seldom turns upon the politics of their own country, in mixt circles; they are willing enough to leave behind them, when they go abroad, what is sufficiently vexatious and troublesome, when they are obliged to apply their thoughts that way. I have often lamented, that *Electioneering*, as it is called, should be so ruinous to private attachments and good fellowship, and should generate such black blood in society as it does; and those who administer to this cruel distemper, whether they lurk in secret, or act openly, have (in my humble opinion) much to answer for. We frequently see the bonds of nature rudely torn asunder; and I believe there may be instances produced from story, of confederated bands of Politicians hacknied in their trade, who have availed themselves, without remorse, of the avowed rawness, simplicity, and vanity of youth, to accomplish their purposes, though they divided a house against itself, and kindled the inextin-

guishable flames of hatred and animosity, even in the hearts of brothers.

"1st Cit. Wormwood! Wormwood!

"2d Cit. This indeed must turn the milkiest nature into bitterness. Had I been trained up in the schools of those orators who were heretofore the subjects of your glowing panegyrick, I should dress my thoughts in such language, as well might justify your exclamation. These shocking convulsions have often tempted me to think, that I should not break my heart if a Law were expressly provided against this darling privilege of canvassing; that the suffrages of the people might be permitted to take their free course on the day of election. As to what you whispered to me yesterday, about the resolution of some of your patriotick friends, not to serve, unless those whose principles chime in with their own were chosen along with them; I must take the liberty to reply, that I look upon such a threat as a mere raw-head and bloody bones, which will not in the end advantage their cause; but, be that as it may, to speak in the language of the good old song of Chevy-Chace:

"'I trust we have within the Realm,
" Five hundred men as good as they.'

"Farewell, Sir, I shall torture your patience no longer with my tiresome and homely discourse; but learn, for the future, to be charitable to those who differ from you in opinion; and *judge not lest ye be judged.*"

An insight into the feelings of the people as to the object of the communication and the author of it, are displayed by a shorted communication from another source that appeared in the *Gazette* of January 21st:

Mr. Printer.

"The dialogue, which you were so obliging as to publish in your *Gazette*, of the 7th Instant, has, it seems, inflamed the curiosity of your fellow-citizens, to an inordinate degree. Numberless excursions have been made into the field of conjecture, touching the editor, who is supposed, and on very

good grounds, to be the same with him who overheard the conversation, which is committed to paper. Stratagems, after much profound debate, have been devised to ensure the gratification of that universal passion of being in the secret. And many, after suffering repeated discomfitures in their efforts to discover my person, have taken upon them to insinuate, with a significant shrug and arch leer, that they have been favored with a peep behind the curtain—proceeding so far in confirmation of their importance as to offer a clue to conduct the inquisitive through the labyrynth, by particulizing my dress, gait, and certain natural marks of designation, which I bear in my visage. I can, however, safely protest that not one of these pretended mysticks know any more of the above circumstances than of the cut of the doublet which the present Spanish monarch made with his own royal hands, of the dimensions of Prester John's foot, or of the mole under Mahomet's ear. Indeed, the picture which they have been pleased to draw of me is so far from the true likeness, that I am a tall, thin, large boned man, with broad shoulders, black eyes, olive complexion, and a suit of black curled hair; and in my dress and gait, after the common fashion. Nor do I, at present, recognize any singularity which distinguishes me from the rest of the world, unless it be a sudden and insensible application of my right hand to the region of the left hypocondrium, both in and out of company; which is owing to a throbbing of the spleen—a disease I have contracted by remaining too long in an incurvared postule, when engaged in contemplation of the publick miseries we are likely to be such deep sharers in, through the present prevailing influence, altogether as unaccountable as it is pestilent.—I have heard myself pronounced by some, who only *see me feelingly*, a contemptible anonymous scribbler; who wear my dagger under my cloak. I shall, however, continue in my invisible agency; trusting that the eye, from which I shall prevail to purge the film, will not be fatally closed against the light of reason, through very perverseness, and anger, that the hand which exhibited the medicine is unknown. If my pen be guided by

truth, if I made it a religion to obtain from the private, unless where head-long indiscretion has involved and blended it with the publick character; it is a thing of no magnitude, whether my real name or a fictitious signature appear at the bottom of my page. If I be contemptible, my folly must pour balm into the wound my malice inflicts.

"Slander, it must be confessed, is defeatable enough, of all conscience, when it issues from the press. But there is yet a species of slander, infinitely more infernal—that which is forged on the spur of every occasion, and given out to be distributed by the well-trained hirelings of a court or faction. This is generally conveyed through so many dirty conduits, and discoloured with such a variety of poisons, that it is impossible to trace it to its true source, until it has done its work. I question not but that the Devil himself, who is the father of slanders, if it had been left to his choice, would have preferred this kind of vehicle, as more effective than the instrumentality of all his nominal brethren of the press. But the charge that I am anonymous is, of all others, the most absurd and rash, as it suggests the strongest argument that I am not actuated by vanity or a lust of praise—and in this particular, I but pursue the track, with steps however unequal, trodden by those geniuses, who have shown the brightest, and done the greatest good in their generations. And to explain either the necessity, or propriety, of this method of instructing the publick in *a free government* would be to insult the intellects of my readers. If I could possibly conceive that any advantage would redound to the publick by an open manifestation of myself, I would, without a moment's hesitation, stand forth in my natural person; sensible as I am, that by so doing I should take by the tooth, *two ever angry bears:* whose appetites, it is probable, are now pretty keen for prey; considering their disappointment has constrained them, for a tedious and dreary season, to suck their own paws, after being set upon a much more substantial repast.

"The rage of these monsters, for such I am informed one of the political constellation has vindicated to himself and his

fierce compeer, should not appeal to me, as I am convinced, that, in all public exertions, much is to be hazarded. The fury with which these personages inveigh against those who have prevented them in the lucrative posts of government, may, I think, be classed among the most pregnant instances of the short-sightedness of human nature. For let us suppose that their schemes of profit had been crowned with success, and they had attained to that PREFERMENT AND PRE-EMINENCE they reached after with such notorious and ardent longing. Their consequence must then have been no longer supported by the delusion, partiality or suspicions of the constituent; but by the force of superior talents alone. And in how ample a degree they would have needed this superiority of talents we may form a tolerable judgment; as we have room to suspect, from the tyranny, injustice and fatal tendency of the counsels they have had a principal share in, that their little fingers, if they had got into power, would have been heavier on the people than the loans of all the present ministers of the constitution. I think it would have been much the more subtile management for those who *were* in power, when the work which going forward was first discovered, to have retired and co-operated heartily with their assailants in breaking down all the hindrances to their promotion; as they could not have failed of being shortly entertained with a very grateful spectacle. They would have beheld them stretching from the barrier to the goal with the same unfortunate speed which is described, with the finest touches of genuine humor, in the following stanza—

> The puzzling Sons of party next appear'd,
> In dark cabals, and midnight juntos met;
> And now they whisper'd close, now shrugging rear'd
> Th' important shoulder; then as if to get
> New light, their twinkling eyes were inward set,
> No sooner Lucifer recals affairs,
> Then forth they various rush in mighty fret;
> When lo! *push'd up to pow'r, and crown'd their cares,*
> *In comes the other set, and kicketh them down stairs.*
>
> *Thomson's Castle of Indolence*—

"I hope, in my future communications to the publick, that I shall not be looked upon in the odious light of a common listner; insomuch as I report nothing but the secret effusions of the hearts of others; in which, however, I shall continue to act a faithful part; telling the truth, the whole truth, and nothing but the truth; and taking especial care to overhear no controversy which does not turn upon some popular topick, which it highly importes your fellow-citizens to know to the bottom; and where one of the parties, at least, is a man of sound judgment, acute observation, and candid temper, and capable of disclosing a competent portion of solid matter upon the argument. Indeed, the gracious reception which the first born of my lucubrations has met with from the publick forbids me to prognosticate that so harsh a censure will be generally passed upon me; but rather that I shall be admitted as a man exposing my health to the fatigues of unseasonable watchings, and the eager inclemency of a wintry sky, for the benefit of the weal.

"It is not probable, that room will be quickly afforded me to impart anything to the publick, through the medium of your *Gazette:* as a rumor has gone forth that it is appropriated to the use of the two lights and ornaments of the present age, as celebrated for their exquisite tastes as their profound jurisprudence; who are determined, at length, to recreate themselves therein with the delicious and welcome banquet of turtle and venison furnished out by their reverend provedore—since the Baltimore news-paper, though solemnly announced to be *established*, turns out to have as airy a foundation as another *establishment*, which has received the sanction of the same sacred names; and their country is now expecting, with anxious suspense, when they will fall to. When this entertainment is fairly cleared away, I shall then make my request, that you will be so indulgent as to serve up to your customers the auricular acquisitions of

"Your sincere, humble servant,

"The Editor of the Dialogue."

CHAPTER 6.

FIRST CITIZEN'S FIRST LETTER.

1773. The object of the communication of January 7th was too plain, and the sarcasm too severe, to be allowed to pass unnoticed by the people's party. A reply to it required the effort of a well-equipped mind, learned in the law, resourceful in debate. That man to champion the cause of the freemen of Maryland was Charles Carroll, of Carrollton.

Under pretense of correcting errors in the communication of January 7th, Mr. Carroll replied to Dulany.

In the *Gazette* of February 4, 1773, appeared the first letter of Mr. Carroll. It read:—

SIR:

"The intention of this address is not to entice you to throw off a fictitious, and to assume a real character: for I am not one of those who have puzzled themselves with endless conjectures about your mysterious personage; a secret too deep for me to pry into, and if known, not of much moment; of as little is it in my opinion whether your complexion be olive or fair, your eyes black or gray, your person straight or *incurvated*, your deportment easy and natural, insolent, or affected; you have therefore my consent to remain concealed under a borrowed name, as long as you may think proper, I see no great detriment that will thereby accrue to the public; *you* will be the greatest! nay! the only sufferer; your fellow citizens, ignorant to whom they stand indebted for such excellent lucubrations, will not know at what shrine to offer up their incense, and tribute of praise; to you this sacrifice of glory will be the less painful, as *you are not actuated by vanity or a lust of fame*, and in obscurity you will have this consolation still left, the enjoyment of conscious merit, and of

self-applause. Modest men of real worth are subject to a certain diffidence, called by the French *la mauvaise honte*, (awkward bashfulness), which frequently prevents their rising in the world; you are not likely, I must own, to be guilty of their fault; *in vitium ducit culpae fuga;* (the avoiding one fault is apt to lead us into another); you seem rather to have fallen into the other extreme, and to be fully sensible, of the wisdom of the French maxim, *il fault se faire valoir*, (in the text these words have received a liberal interpretation; they mean strictly—That a person should assume a proper consequence), which for the benefit of my English readers, I will venture to translate thus—'*A man ought to set a high value on his own talents.*' This saying is somewhat analagous to that of Horace—*sume superbiam quaesitam meritis.* (May be translated —'assume a pride to merit justly due.') As your manner of writing discovers vast erudition, and extensive reading, I make no doubt you are thoroughly acquainted with the Latin and French languages, and therefore a citation or two from each may not be unpalatable.

"Having paid these compliments to your literary merit, I wish it were in my power to say as much in favor of your candor and sincerity. The editor of the dialogue between two Citizens, it seems, is the same person, who *overheard and committed to writing the conversation.* I was willing to suppose the editor had his relation at *second hand*, for I could not otherwise account for the lame, mutilated, and imperfect part of the conversation attributed to me, without ascribing the publication to downright malice, and wilful misrepresentation. Where I can, I am always willing to give the mildest construction to a dubious action. The editor has now put it out of my power of judging thus favorably of him, and as I have not the least room to trust to his impartiality a second time, I find myself under the necessity of making a direct application to the press, to vindicate my intellectual faculties, which, no doubt, have suffered much in the opinion of the public (notwithstanding its great good nature) from the publication of the above-mentioned dialogue.

"The sentiments of the first Citizen are so miserably mangled and disfigured, that he scarce can trace the smallest likeness between those, which really fell from him in the course of that conversation, and what have been put into his mouth.

"The first Citizen has not the vanity to think his thoughts communicated to a fellow citizen in private, of sufficient importance to be made public, nor would he have had the presumption to trouble that awful tribunal with his crude and indigested notions of politics, had they not already been eggregiously misrepresented in print. Whether they appear to more advantage in their present dress, others must determine; the newness of the fashion gives them quite a different air and appearance; let the decision be what it will, since much depends on the manner of relating facts, the first Citizen thinks he ought to be permitted to relate them his own way.

"1st Cit. I am sorry that party attachments and connexions have induced you to abandon old principles; there was a time, Sir, when you had not so favourable an opinion of the integrity and good intentions of Government, as you now seem to have. Your conduct on this occasion makes me suspect that formerly *some men, not measures,* were disagreeable to you. Have we reason to place a greater confidence in our *present rulers*, than in those to whom I allude? Some of the present set (it is true) were then in power, others indeed were not yet provided for, and therefore a push was to be made to thrust them into office, that all power might centre in *one family.* Is all your patriotism come to this?

"2d Cit. I do not like such home expostulations, convince me that I act wrong in supporting Government and I will alter my conduct, no man is more open to conviction than myself—(Vide Dialogue to the words, 'Would be all fair argument.')

"1st Cit. I am not surprised that the threadbare topics of arbitrary princes, and proclamations, should give you uneasiness; you have insinuated that the repetition of them is tiresome, but I suspect that the true cause of your aversion proceeds from another quarter. You are afraid of a com-

parison between the *present ministers* of this province, and *those* who influenced Charles the First, and brought him to the block; the resemblance I assure you would be striking. You insinuate that '*The opinions of the greatest Counsel in England*' are come to hand, in favor of the proclamation, and 40 per poll, and you seem to lay great stress on those opinions. A little reflection, and acquaintance with history will teach you, that the opinions of *Court Lawyers* are not always to be relied on; remember the issue of *Hambden's* trial: '*The prejudiced or prostituted Judges' (four 'excepted')* (says Hume) '*gave sentence in favour* of the Crown.' The opinion even of a Camden, will have no weight with me, should it contradict a settled point of constitutional doctrine. On this occasion I cannot forbear citing a sentence or two from the justly admired author of the Considerations, which have made a deep impression on my memory: '*In a question* (says that writer) *of public concernment, the opinion of no Court Lawyer, however respectable for his candor and abilities, ought to weigh more than the reasons adduced in support of it.*' He then gives his reasons for this assertion; to avoid prolixity I must refer you to the pamphlet; if I am not mistaken you will find them in page 12. Speaking shortly after of the opinions of Court Lawyers upon '*American affairs,*' he makes this pertinent remark: '*They,' (Court Lawyers opinions), 'have been all strongly marked with the same character; they have been generally very sententious, and the same observation may be applied to them all, they have declared* THAT *to be* LEGAL *which the minister for the time being has deemed to be* EXPEDIENT.' Will you admit *this to be fair argument?*

"2d Cit. I confess it carries some weight with it; I cannot with propriety dispute the authority, on which it is founded; make therefore the most of my concession; should I admit your reasoning on this head to be just, does it follow, that the Court and Country interests are incompatible; that Government and Liberty are irreconcilable? Is every man, who thinks differently from you on public measures, influenced or corrupted?

"1st Cit. '*God forbid it should be the case of every individual.*' I have already hinted at the cause of your attachment to Government; it proceeds, I fear, more from personal considerations, than from a persuasion of the rectitude of our Court measures; but I would not have you confound Government, with the Officers of Government; they are things really distinct, and yet in your idea they seem to be one and the same.

"Government was instituted for the general good, but Officers intrusted with its powers, have most commonly perverted them to the selfish views of avarice and ambition; hence the Country and Court interests, which ought to be the same, have been too often opposite, as must be acknowledged and lamented by every true friend to Liberty. You ask me are Government and Liberty incompatible; your question arises from an abuse of words, and confusion of ideas; I answer, that so far from being incompatible, I think they cannot subsist independent of each other. A few great and good princes have found the means of reconciling them even in despotic states; Tacitus says of Nerva: '*Res olim dissociables miscuit, principatum, ac libertatem,*' (thus translated by Gordon—Nerva blended together two things, once found irreconcileable—Public Liberty and sovereign Power); a wicked minister has endeavored, and is now endeavoring in this *free government*, to set the power of the supreme magistrate above the laws; in our mother country such ministers have been punished for the attempt with infamy, death or exile; I am surprised that he who imitates *their* example, should not dread *their* fate.

"2d Cit. This is not coming to the point, you talk at random of dangers threatening liberty, and of infringements of the constitution, which exist only in your imagination. Prove, I say, *our ministers* to have advised unconstitutional measures, and I am ready to abandon them and their cause; but upon your *ipse dixit*, I shall not admit those measures to be unconstitutional, which you are pleased to call so, nor can I allow all those to be Court hirelings, whom you think proper to stigmatise with that opprobrious appellation, and for no other

reason, but that they dare exercise their *own judgment in opposition to yours*—[Read the 2d Citizen's harangue from the last words (opposition to yours) to the following inclusively *sweat of his brow.*]

"1st Cit. What a flow of words! how pregnant with thought and deep reasoning! if you expect an answer to all the points, on which you have spoken, you must excuse my prolixity, and impute it to the variety of matter laid before me; I shall endeavor to be concise, and if possible, avoid obscurity—you say—*I know not what or whom I mean by we, and the friends of the constitution—I will tell you*, Sir, whom I do not mean, from whence you may guess at those, whom I do. By friends of the constitution, I mean not those, whose selfish attachments to their interests has deprived the public of a most beneficial Law, from the want of which by your own account, '*our staple is fallen into disgrace in foreign markets and every man's property in a degree decreasing and mouldering away.*' I mean not *those few*, out of tenderness and regard to whom, the general welfare of this province has been sacrificed; to preserve *whose* salaries from diminution, the fortunes of all their countrymen have been suffered to be impaired; I mean not *those*, who advised a measure, which cost the first Charles his crown and life, and who have dared to defend it upon principles more unjustifiable and injurious than those, under which it was at first pretendedly palliated. You see, sir, I adopt the maxim of the British constitution—*The King can do no wrong.* I impute all the blame to his ministers, who if found guilty and *dragged to light*, I hope will be made to feel the resentment of a free people. But it seems from your suggestions that we are to place an unlimited trust in the men, whom I have pretty plainly pointed out, because they are men of great wealth and have '*as deep a stake in the safety of the constitution as any of us.*' Property even in *private* life, is not always a security against dishonesty, in *public*, it is much less so. The ministers, who have made the boldest attacks on liberty, have been most of them men of affluence; from whence I infer, that riches so

far from insuring a minister's honesty, ought rather to make us more watchful of his conduct.

"You go on with this argument, and urge me thus: 'Do I *conceive that such men can possibly be hired unless they be overtaken by infatuation, to engage to pull down a fair and stately edifice, with the ruin of which, as soon as it is levelled to the ground, they and their families are to be stoned to death.*' I have read of numberless instances of such infatuation; there are now *living examples* of it; the history of mankind is full of them; men in the gratification of sensual appetites, are apt to overlook their future consequences; thus for the present enjoyment of wealth and power—liberty in reversion will be easily given up; besides, a perpetuity in office may be aimed at; hopes may be entertained that the *good thing*, like a precious jewel, will be handed down from *father to son.* I have known men of such meanness, and of such insolence (qualities often met with in the same person), who exclusive of the above motives, would wish to be the first slave of a sultan, to lord it over all the rest; power, Sir, power, is apt to pervert the best of natures; with too much of it, I would not trust the milkiest man on earth; and shall we place confidence in a *minister* too long inured to rule, grown old, callous, and hackneyed in the crooked paths of policy?

"2d Cit. '*I do not choose to answer this last question*'—you grow warm and press me too close. But why is all your indignation poured out against our ministers, and no part of it reserved for the lawyers—those cut-throats, extortioners—those enemies to peace and honesty, those *reipublicæ portenta, ac pœna fumera, (Mr. Melmoth, the elegant translator of Cicero's familiar letters, makes this remark in his notes on the 8th letter of the first book, Vol. 1—'Cicero has delineated the characters at large of these consuls (Piso and Gabinius) in several of his orations, but he has in two words given the most odious picture of them that exasperated eloquence perhaps ever drew, where he calls them 'duo reipublicæ portenta ac pœne fumera'—an expression for which modern language can furnish no equivalent,')* to use the

energetic words of Tully, because I can find none in English to convey and full meaning, but by comparing *our harpies* to those two monsters of iniquity—Piso and Gabinius.

"1st. Cit. From this vehemence of yours, I perceive you are one of those, who have joined in the late cry against lawyers; from what cause does all this rancour and animosity against those gentlemen proceed? is it a real tenderness for the people, which has occasioned such scurrility and abuse? or does your hatred, and that of your kidney, arise from disappointment and the unexpected alliance, between the lawyers and the people, in opposition to officers. This alliance, I know has been termed unnatural, because it was thought contrary to the lawyer's interests, to separate themselves from the officers; since a close and firm union between the two, would probably secure success against all patriotic attempts to relieve the people from their late heavy burthens, of which too great a part still subsists.

"2d. Cit. '*For Heaven's sake to what purpose is all this idle talk? you well know it does not touch us, we are not galled and therefore need not wince.*' But reconcile, if you can, the inconsistency of conduct, with which some of your favourites may be justly reproached; I have one or two in my eye *(great patriots)* whose conduct, I am sure, will not bear a strict scrutiny; '*I can tell them with truth*—(Vide Dialogue from the last words, to these)—*glorious and patriotic particulars.*'

"1st Cit. Is it a crime then to be seen in the company of certain great officers of government?—surely *their* principles must be pestilential indeed, whose *very breath* breeds contagion. But you can name, '*the very appointments, they have laid their fingers upon, you are well appraised of their eager impatience to get into office;*' if you are well assured of all this, if you can name the appointments, why in God's name, do it; speak out, at once undeceive me; show me that I have mistaken my men, that I have been imposed on; for never will I deem that man a fast and firm friend to his country or fit to represent it, who under their circumstances, applies for, or

accepts an office from government; the application for, or the acceptance of a place by the persons alluded to, would in my opinion, as much disqualify them for so important a trust, as the duplicity of character, which you lay to their charge.

"2d. Cit. Do not mistake my meaning, or wilfully misrepresent it; I do not pretend to insinuate, that a person accepting a place thereby becomes unfit for a representative, but that no dependance can be placed in one, who declaims with virulence against *officers*,—and yet would readily take an *office*.

"1st Cit. So I understood you, have I put a different construction on your meaning?

"2d Cit. Not expressly, but you seem to think the acceptance of a place, as exceptionable, as duplicity of conduct; I am not quite of that opinion.

"1st Cit. There we differ then; I esteem a double dealer, and an officer equally unfit to be chosen a member of Assembly, for this opinion I have the sanction of an Act of Parliament, which vacates the seat of a member of the House of Commons on his obtaining a post from Government, presuming, that men under the bias of self-interest, and under personal obligations to Government, cannot act with a freedom and independancy becoming a representative of the people. The Act, it is true, leaves the electors at liberty to return the same member to Parliament, in which particular (be it spoken with due deference) it is more worthy our censure, than imitation; I have a wide field before me, but I perceive your patience begins to be exhausted, and your temper to be ruffled. I have told some disagreeable truths with a frankness, which may be thought by a person *of your steadiness and importance* somewhat disrespectful; I leave you to ponder in silence, and at leisure on what I have said—Farewell."

CHAPTER 7.

THE SECOND LETTER OF ANTILON.

1773. The answer of First Citizen had aroused the camp of the gubernatorial party. It was evident that the letter was the attack of a polished weapon from the well-equipped armory of a master mind. Its effect could not be ignored. Silence meant consent to its irresistible arguments in favor of the position of the people. To answer this superb apology could not be left to a feeble pen nor an unpracticed hand. In the official party there was but one man who by common consent, created any hope of meeting, with any attempt at success, this unknown and fearless champion of the cause of the opposition. That man was Daniel Dulany, of Daniel. The decision made, Dulany acted promptly. On February 18th, Dulany's second letter,appeared in the *Maryland Gazette.*

While Carroll feigned that the author of the Dialogue was unknown to him, his pointed allusions to Dulany showed that he knew his antagonist from the start. The adroitness of Carroll was especially marked in his quotation from "Considerations,"—that argument that Dulany had written in 1765 against England's right to tax the American colonies, and which pamphlet, reprinted in London early in 1776, had given, it is believed, Pitt his arguments for his maguificent speech in Parliament in defence of the colonies when the repeal of the first Stamp Act was under consideration. The quotation was Dulany against Dulany. Now, Dulany *favored a tax*, by the Executive, without the consent of the people. In "Considerations," he *opposed a tax* by Parliament without the consent of the people. The offensive pen portrait that Carroll drew of Dulany was maddening to that man who had heretofore only been the recipient of honors and laudations. A keener appre-

ciation of the times and the correspondence will be felt if this fact is kept in view—that the governmental party had but one reason to explain the cause of opposition to its policy, and that reason was that the leaders of the people were animated in their course alone by the fact that they were disappointed because they had not been given offices by the Governor. A party so infatuated could only meet with disaster. In reply to Carroll, Dulany, for the first time, under the name of "Antilon," wrote :—

"To the Printers of the Maryland Gazette.

"*Not having been in any manner, directly or indirectly, concerned in any piece, that has appeared in your paper in regard to the present political contests, I hope you will give a place to the inclosed, in your next Gazette.*

"February 14, 1773.

"*Malevolo nihil acerbius, imperito nihil injustius, homine impudente nihil molestius.* Macrob. de Mor. Hom.

"The confederacy of infuriate malignancy, overweening ignorance, and habitual licentiousness, would be, indeed, formidable, if there were no other means of defence against its attacks, than to dissolve the union by softening rancour, correcting folly, and reforming profligacy; but, happily, little is to be dreaded from the alliance, when the aims of all its exertion are easily exposed, and indignation, and contempt, ensuing the detection, can't fail to furnish ample succours to repel the outrage.

"The restriction of the Officers (on the falling of the inspection Law) by the Governor's Proclamation, has been represented to be a measure as arbitrary and tyrannical, as the assessment of Ship-money, in the time of Charles the First, not by fairly stating the nature of each transaction, and showing the resemblance by comparison, to convince the understanding; but in the favourite method of illiberal calummy, virulent abuse, and shameless asseveration, to affect the passions.

"Inveterate malice, destitute of proofs, has invented falsehood, for incorrigible folly to adopt, and indurated impudence to propagate. As the artifice employed to raise alarm, can succeed only in the proportion that it deceives, it will be my endeavour to counteract the pestilent purpose, by presenting to the reader, for his candid examination, an impartial account of the Ship-money, and the Proclamation. King Charles, having determined to govern without a Parliament, had, against the fundamental principles of a free constitution, recourse to the Prerogative for raising money on the subject, though in his answer to the Petition of Right, he had recently bound himself not to levy any tax upon the people without the consent of both Houses of Parliament. In pursuance of this scheme of tyranny, 'Ship-money was raised on the whole kingdom, the method fallen upon was, a rate, or proportion on each county, which was afterwards assessed upon the individuals of each. The sum raised was about £200,000 sterling. Writs were issued, directing the tax to be levied by the sheriffs, and requiring them to execute the effects of *the people for the purpose* and *to commit to prison all who should oppose the tax, there to remain, till the King should give order for their delivery.*'

"The necessity, of taking measures of defence against enemies, was alleged as a justification of the arbitrary proceeding; but, 'it was a fictitious, pretended necessity; for England was in no danger from enemies—on the contrary enjoyed a profound peace with all her neighbours, who were engaged in furious, and bloody wars, and by their mutual enmities further secured her tranquillity. The writs, which issued for levying the Ship-money, contradicted the supposition of necessity, and pretended only that the seas were infested with pirates, a slight, and temporary inconvenience, which might well have waited a legal tax laid by Parliament—besides the writs allowed several months for equipping the ships, much beyond the 40 days requisite for summoning the Parliament, and the pretended necessity was continued for near four years.'—Such, in substance, was the affair of Ship-money, the exaction, which

Mr. Hampden opposed with the energetic firmness of genuine patriotism.

"That the reader may compare the two measures, and be the better able to judge of their similarity, I shall recite the Governor's Proclamation, which was in these words:

"'Being desirous to prevent any oppressions and extortions from being committed, under colour of office, by any of the Officers and Ministers of this province, and every of them, their deputies, or substitutes in exacting unreasonable and excessive fees from the good people thereof, I have thought fit, with the advice of his Lordship's Council of State, to issue this my Proclamation, and I do hereby therefore order and direct, that from and after the publication hereof, no Officer nor Officers (the Judges of the Land Office excepted, who are subject to other regulation to them given in charge) their deputies, or substitutes, by reason or colour of his or their office, or offices, have, receive, demand, or take, of any person or persons, directly or indirectly, any other, or greater fees than by an Act of Assembly of this province, entitled *An Act for amending the staple of tobacco, for preventing frauds, in his Majesty's customs, and for the limitation of Officers' fees*, were limited and allowed, or take or receive of any person or persons, on immediate payment (in case payment shall be made in money) any larger fee, than after the rate of twelve shillings and six-pence common current money for 100 pounds of tobacco, under the pain of my displeasure. And to the intent that all persons concerned may have due notice thereof, I do strictly charge and require the several sheriffs of this province to make this my Proclamation publick in their respective counties, in the usual manner, as they will answer the contrary at their peril.'

"It must be allowed, that the table of fees, in the late Inspection Law, was the most moderate of any, ever established in the province—and that the Officers are entitled to satisfaction for the services they perform.

"The reader can't but perceive, that the Officers are restrained from taking *more* from the people, than the table of fees,

referred to, allows, as far as the threats of the Governor's displeasure, *who has power to remove them from their offices*, can operate as a restriction, and that there is no attempt in the Proclamation to subject the people, indebted to the Officers for services performed to any *execution* of their effects, or *imprisonment* of their persons, on *any account*.

"The Proclamation issued with the professed design of preventing extortion and oppression; but if it had not *ascertained* the fees that might be received, it would have been entirely ineffectual, as a preventive of extortion.

"It needs not any display of argument to prove, that the Proclamation, being prohibitory, allowed the Officers to receive, with impunity, according to the rate referred to.

"Extortion, according to its proper, legal signification is committed when an Officer, by colour of his office, takes money (or other valuable thing) which is not due, or *more* than is due, or before it is due. That an Officer is entitled to compensation, for the services he performs, can't be denied, and therefore he is not guilty of extortion, *merely in taking money*, or other valuable thing for his service, unless he takes *more* than is due. It is obvious to common sense, that there *must* be some *established* measure, or there can be no *excess*—that the term *more* cannot apply, unless what is due be *ascertained*—there must be a *positive*, or there can be no *comparative*. Let the result then be considered. If *something* be undeniably due, when a service is performed, and no *certain* rule, or measure to *determine* the rate, should an Officer take *as much as he can exact*, he would not commit extortion, according to the legal acceptation of the term *extortion*. The professed design of the Proclamation was to prevent extortion, the method pursued (and it was the *only one* that could be pursued) to *effectuate* the prevention, was the *settlement* of the rates—if the Proclamation had authority to fix the rates, according to which the Officers *might* receive, and *beyond which*, they could not *lawfully* receive, it was preventive of extortion—if it had not *such* authority, it was ineffectual; but whether it had, or

not, depended on its legality *determinable in the ordinary judicatories;* for, as the reader will observe, there is no enforcement provided, or attempted by the Proclamation, with respect to those, for whom services might be performed; wherefore, if the settlement of the fees was attended with a legal obligation on the Officer not to take *more* than, and on the people to pay *as much as*, the rates established, the Officer's remedy to recover his due, on refusal to pay it, must be sought for, where any other creditor is entitled to relief—if on the contrary the settlement of fees was not attended with *such* obligation, the Proclamation was ineffectual, except so far as the dread of the Governor's displeasure might restrain Officers from taking, beyond the rate allowed by the late Inspection Law, and this being a mere question of Law, determinable in the *same* course, that justice is administered in *other* cases, what astonishing extravagance is it to call the Proclamation an infringement of the fundamental principles of a free constitution, and what malice and effrontery must *they* be possessed with, who have endeavoured to represent it in the odious light of an act of tyranny—a measure destitute of all enforcement, of every degree of efficacy, which the *Law does not give* in its *regular*, ordinary course of administration!—*Fortiter aspergas, ut aliquid adhæreat* (asperse plentifully that something may stick) is the favourite document of the malicious Veteran—Like Ship-money! Compare, Reader, the two transactions, and your sensibility will be severely tasked to repress the emotions of indignation.

"The Proclamation binds no farther than it is legal—its legality is determinable, in the ordinary course of justice—it directs no method of compulsion to enforce a compliance from the people, nor gives any remedy to the Officer, for the recovery of his dues, to which he is not entitled by the rules of Law—if legal, it is not oppressive—if not legal, the severest epithet that justice can admit, is, that it is useless to the Officer, though of some service to the people, in the restriction to which he is subjected. But the writs, for raising Ship-money, imposed a tax, derogatory from those most essential

principles of Government, on which the conservation of publick liberty depends. These writs levied about £200,000 sterling, when nothing was due—they compelled payment by means the most rigorous; by distress, or execution on the effects, and imprisonment of the people, who should oppose the levy, during the will and pleasure of a tyrant. The royal mandate imposed the tax, adjusted the proportion, and directed the collection of it—the arbitrary seizure of property, and the deprivation of personal liberty were employed to spread terror, and compel submission to a tyrant's will; I say, tyrant, though the appellation may offend *the principled delicacy of Independent Whigs, particularly characterized by their attachment to the maxim, that the King can do no wrong*, and the doctrine of divine indefeasible hereditary right—a maxim and doctrine to which the refractory *Tories*, at the *Revolution*, offered such impious violence. *Whigs*, of whose instruction Cambridge cannot boast, whatever praise may be due to the documents of St. Omers, and the institution of billiard rooms and tipling houses—the former, the best seminary in the universe of the champions for civil and religious liberty, the latter, of the most finished patterns of modesty, decorum, and animated elocution. King James the Second, *to be sure*, did *no wrong*, in attempting to destroy all the rights of the subject, civil and religious, and yet was cruelly driven into exile; but let not the lamentations of the confederated *Independent Whigs* be too loud in deploring this *melancholy* event, as vulgar prejudice ranks the Revolution among the most glorious deeds, that have done honor to the character of Englishmen, and may be apt to consider the principles of *our Independent Whigs*, as a basis too rotten to sustain the weighty superstructure of national liberty. There was a time, when the generous and spirited behaviour of one of the Confederates nearly brought on a relentless persecution against all of the same religious profession. Unjust and merciless vengeance! Had he alone been the martyr, the pangs of his sufferance would have been more than compensated by the glory of it; but hard it would have been on those to suffer, who could have derived no consolation from a similar

merit. After the experience of having nearly ruined the party, of whom the importance and powers of superior wealth, and superior talents, placed him at the head.—After the experience of greater benefits having been derived from his most implacable enmity, than could have been from the utmost exertions of his most cordial friendship, (my allusion is sufficiently intelligible) what admirable firmness must *that man* have, who will persist in the same course. If actuated by the motive of the unhappy spirit, who feels some relief, in his torments, from the agonies of others, his persistence might be accounted for; but this hypothesis must fail; for miscarriage has ever attended his efforts to distress, and benefits redounded from his best concerted schemes to destroy—how forlorn his situation! tormented when inactive—disappointed when active—incapable of relief, but from anothers pangs, and incapable to inflict them.

"As the full efficacy of the Proclamation, for the very purpose professed, that of preventing extortion, depends upon the authority to settle the fees, because without the standard, or measure to ascertain what is due, there can be no extortion in taking *any* sum, for a service performed; how amazingly strange is it to say, that the Proclamation was defended upon principles different from what is professed, when the arguments, applied in defence of the Proclamation, were calculated to prove the authority to settle the fees, without which the Proclamation, for the reasons assigned, would be ineffectual as a preventive of extortion. The Governor's Proclamation was 'a measure that cost King Charles his crown and life, which the advisers of it have defended upon principles, more unjustifiable and injurious than those, under which it was pretendedly palliated. You see, Sir, I adopt the maxim of the British constitution, *the King can do no wrong.* I impute all the blame to his Ministers, who, if found guilty, and dragged to light, I hope will be made to feel the resentment of a free people.'—I must refer the reader to the *Gazette* of the 4th instant, for this most curious specimen of the political tenets of *these modern Independent Whigs*, of the extent of

their knowledge, and the force of their expression. It would be hard indeed if his Majesty was chargeable with having done wrong, because the Governor of Maryland, with the advice of his council, issued a proclamation to prevent the extortion of Officers. There is no occasion to have recourse to any maxim of jurisprudence for his vindication, common sense will at once acquit him—there can be no difficulty in finding out his Ministers, the Governor and Council are answerable in this character. *He* cannot disavow an act to which his signature is affixed. The indignation, and contempt, such impotent vehemence and futile arrogance are wont to excite, make it difficult to speak without perplexity.—The Governor, however, in the complimental address of one of the Confederates to himself, and his coadjutors, is raised to the Throne, and graced with the attribute of indelible rectitude. Base prostitution! Is their patriotism come to this? Did they mean by this fawning servility to expiate *all* the wanton indignities they had offered him? After he had most expressly declared that 'what *he* should judge to be right and just, would be the *only* dictate to determine his conduct,' they represented that he was blindly led by others, and not determined by his own judgment, and then add an insult to his understanding, by such extravagant adulation, as the meanest debasement would blush to offer, delicacy must nauseate, and common sense resent with indignation, especially after having been honoured by an approbation of his conduct, he is ambitious to deserve, and the *highest* he can receive. They know not him whom they thus treat.

"Cui male si palpere, recalcitrat undique tutus—so inseparable are insolence and meanness—'had' he relied upon his own manly judgment, &c.

'EDEN had been a little God below.'

"With what propriety did they choose the signature, INDEPENDENT WHIGS? What vast knowledge must these men have, who are acquainted with the manners of the Ancients, *who to be sure never made use of invectives in their political contests*, as

well as they are with the principles of Whiggism? A knowledge which neither OXFORD nor CAMBRIDGE ever taught.

"The idea of tax having been annexed to the regulation of the fees, though without any provision for their payment, other than what the Law, on the very grounds of its legality, should afford, it may not be amiss to examine the propriety of it. If the idea be proper, then fees can be settled, in no case, except by the Legislature, because it requires such authority to lay a tax; but the House of Lords, the House of Commons, the Courts of Law and Equity in Westminster Hall, the Upper and Lower Houses of Assembly, have each of them settled fees. If such settlement be legal, then the idea is improper; if illegal, it is strange, indeed, that it should have so generally obtained. When fees have not been settled by an Act of Assembly, they have, for the most part, been settled by the authority of Government, so that the Proclamation in 1770 was not the invention of any daring Ministers, *now in being.* The opinions of eminent Counsel, as well before the year 1733, as since the year 1770, have been very fully given in favour of this authority, on a full state of the case, and in the latter instance, after a consideration of the arguments contained in the Address to the Governor, and his answer; but the opinion of Counsel having been intimated, the following quotation from a pamphlet has been introduced as pertinent to the occasion: 'On a question of publick concernment, the opinions of Court Lawyers, however respectable for their candor, ought not to weigh more than the reasons adduced in support of them; they have been all strongly marked with the same characters; they have been generally very sententious, and the same observation may be applied to all of them. They have declared that to be legal, which the Minister, for the time being, has deemed to be expedient.'

"You have, reader, already seen in the comparison between Ship-money, and the Governor's Proclamation, one instance of the extraordinary knack of the *Independent Whigs* at assimilation, and you will now be entertained with another.

"The opinion respecting the Proclamation is on no point, which the Minister for the time being aims to establish. Opinions, in favour of the Proclamation, have been given at the different periods of 1732 and 1772, by eminent Counsel, not only unconnected with, but distinguished by their opposition to, Administration. Make the comparison, how striking the resemblance!—I shall not contend that the opinion of Counsel is conclusive in any case; but presume to say, that it may have weight, as well on the affair of the Proclamation, as any other. And that they, whose sentiments coincide with the opinions of Counsel, eminent in their profession, and disinterested on the question, are not fairly represented as engines of oppression, and enemies to their country. It would be a degree of arrogance, rather too excessive, *even* for the Confederacy, *expressly to avow* that *every* sentiment, and every measure opposite to their malignant and selfish views, ought to be treated with contempt, or received with abhorrence, and such only entitled to regard, as tend to promote them. The *prudent and politick* Ogle, notwithstanding the most violent opposition that ever a Governor of Maryland met with, to his measures, regardless of all the virulent abuse, with which he was attacked, acted steadily, and despised the railings, particularly, of such men, as he disappointed in their unreasonable, and arrogant expectations, by doing what he thought, justice and equity required. *He* was so well convinced of the authoritative force of the Proclamation for settling the fees of Officers, that he expressly determined, as Chancellor, by a final compulsory decree, fees should be paid upon the authority, and according to the very settlement of the Proclamation. What will the Confederacy say to this? Did *he* deserve 'infamy, death, or exile,' for giving an irresistible, conclusive force to the Proclamation? No, no, to be sure, not quite a punishment so severe, because the *Independent Whigs (Independent Whigs, risum teneatis) highly approve the British maxim*, the 'King can do no wrong,' and therefore (the *reasonable postulatum* being admitted that a Governor is *King)* Mr. Ogle did no wrong; but without doubt, according to their admirable principles, if he

had been Chancellor *only*, and *not both* Chancellor and Governor, he would have deserved death, etc.

"In consequence of a commission issued by the Crown, upon the address of the British House of Commons, the Lord Chancellor of England, *by the authority of his station*, and by and with the advice and assistance of the Master of the Rolls, ordered that 'the Officers of the Court of Chancery should not demand, or take any *greater* fees for their services in their respective offices, *than, according to the rates he established*, and that any Officer taking *more* should be punished as for a *contempt;* and that all persons might have notice of his regulation and restriction, his Lordship was pleased further to order the same to be forthwith printed and published.' An Address from the House of Commons to the King; a commission from the King in pursuance of it; an Order of the Chancellor settling the fees; this Order printed and published, and, *yet, the settlement of fees, a tax similar to Ship-money!* 'passing strange!' The Members of the House of Commons, *to be sure, were all bribed*, or forgot the privilege they had so often and zealously asserted, or they would not have addressed the King to issue a Commission *for taxing* the subject.

"Serjeant Hawkins, who was a man of experience in the profession of the Law, and whose treatise of the Pleas of the Crown is in great estimation, has been *so rash*, or so great an *enemy to liberty*, as to say in print, that 'the Courts of Justice, in whose integrity the Law always reposes the highest confidence, are not restrained from allowing reasonable fees for the labour and attendance of their Officers; for the *chief danger of oppression* is from Officers *being left at liberty to set their own rates* on their labour, and make their own demands; but there can't be so much fear of *these abuses*, while they are restrained to known and stated fees, settled by the discretion of the Courts, which will not suffer them to be exceeded, without the highest resentment.'

"What, Mr. Serjeant, have the Court's authority to tax the people, in a manner as arbitrary as Ship-money? Shall they be allowed to do *that, which* brought King Charles to the

block? How would the learned gentleman be confounded at this expostulation, if alive to hear it? 'The general welfare of this province has been sacrificed,' say the Confederates, 'out of tenderness and regard to a *few*, to preserve *whose* salaries from diminution, the fortunes of *all* their countrymen have been suffered to be impaired.' What say Ye to this imputation, Ye who *unanimously* dissented to the Inspection Bill? Ye will hardly acknowledge the *imputed* motive of your conduct, as a compliment to your understanding, candor, or spirit. A diminution, and that very considerable, of all fees was readily agreed to, in the election given to all persons to pay in money or tobacco, and this election was extended to the Clergy's dues; but the Bill failed. I might safely refer the question to the opinion of my countrymen, whether, if an Inspection Law had passed, upon the terms offered the Session before last, the general welfare of this province would have been sacrificed, and all their fortunes impaired? If not, what must they think of the principles of such profligate incendiaries, as these Confederates are? Nearly the same alteration of fees was proposed heretofore, *without giving an election to the people to pay in money, or tobacco*, but it failed. *By whom was all power engrossed at that period? Whose influence*, then, put to hazard the passing of the Inspection Law, and prevented the diminution of fees, *in every respect*? Were the fortunes of all the people of Maryland impaired by the Inspection Act, that then passed, though fees were not diminished by it, and the makers of tobacco were obliged to pay in tobacco? Did this Law, which allowed of no diminution of fees, and compelled the planters to pay in tobacco, pass *before*, or *since* the unfortunate æra, when somebody was thrust into office, that *all power* might centre in *one* family? From this insinuation, as well as other touches in the composition of the Confederates, I am led to suspect, that they have received instruction from the Essay on Diabolism.

> "'Some aukward epithets, with skill apply'd.
> Some specious hints, that something seem to hide,
> Can right, and wrong most cleverly confound,
> Banditti like, to stun us, e'er they wound.'

"But whatever may be the demerits of the *father*, what has the *son* done to incur the displeasure of the Confederates, that they already prepare to malign him? As one of the Confederated *Independent Whigs* can hardly entertain any views of personal promotion, to what black passion shall we charge his dislike? Age must have cooled the ardor of ambition; but malignity will not cease 'till life's reck'ning shall forever cease.'

> "'Wash the Æthiop white,
> Discharge the leopard's spots, turn day to night,
> Controul the course of nature, bid the deep
> Hush, at thy Pygmy voice, her waves to sleep;
> Perform things passing strange, yet own thy art
> Too weak to work a change, in such an heart.
> *That* envy, which was woven in thy frame
> At first, will to the last remain the same.
> Reason may droop, may die; but envy's rage
> Improves by time, and gathers strength from age.
> What could persuade thee at thy time of life,
> To launch afresh into the sea of strife?'

"What means the other? Is he anxiously looking forward to the event, most devoutly wished for, when he may shake off his fetters and dazzle the world with the splendour of his talents, and the glory of his political achievements,

> "'And save his country, whilst he—serves himself'?

"Let not Sempronius suspect this—to be outwitted by one, whom, from his soul, he despises, after having

> "'Mouth'd at Cæsar 'till he shook the senate,
> Cloath'd his feign'd zeal in rage, in fire, in fury,'

would drive him to desperation irremediable.

"Officers ought to be restrained, and ought not lawyers? If the former, without restriction, may have it in their power to oppress, may not the latter also? I mean not such a restriction, as the Act of Assembly now in force imposes, an Act which is become a dead letter from its illiberal allowance in causes of difficulty in the superior courts; nor do I mean such a restriction as a reasonable Lawyer would object to—I well know there are men of the profession, who need not the restriction of positive Law to keep them within the bounds of

moderation; but since, as Blackstone observes, it may happen that profligate, and illiberal men, may sometimes insinuate themselves into the most honourable professions, to check their rapacity, and insolence is not unworthy of the legislative attention.

"One may easily imagine that a client, drained of his money, frequently attending with humility to have his business done, insulted with insolence when his pockets are empty, and returning home with disappointment, and chagrin, thinks it hard to be abused, because he cannot answer the demand of **Teeth Money*, and heartly wishes the Legislature would extend their care, and prevent the extortion of the Lawyer, as well as the Officer.

"What do the Confederates mean 'by *dragging* to light—made to feel the resentment of a free people—endeavouring to set the power of the supreme Magistrate above the Laws—punished with infamy, exile, or death—dread of such fate?'

"Have they any other measure, besides the Governor's proclamation, to arraign as an attempt to set the supreme Magistrate above the Law? If they have, let them be precise in their charge, and give me another opportunity of showing them, stripped of disguise, to be, *what they are*. Has their malice, which all the colours of language are too feeble to express, so extinguished every spark of the little sense, 'niggard nature spared them,' as to beget a sanguine hope, that the free people of Maryland will become a lawless mob at their instigation, and be the dupes of their infernal rage? When nature's work is so equivocal that we are at a loss to determine, whether she intended to exhibit a man for human humiliation, or a monkey for human diversion, we are inclined to pity, or to laugh, as the object happens to strike the present disposition; but when we behold the animal with the torch, or firebrand,

*A tribute exacted by some Turkish tyrants of the poor people, whom they plunder of provision, for the trouble of using their Teeth in eating it. Such plunders vehemently declaim against regular dues, that there may be the more for themselves to spoil.

bent on mischief, we should dread its fury, if not out of the reach of it.

"One word more to the Confederates, or *Independent Whigs*, if they choose the signature to *their own* panegyrick on *their own* excellencies, and then *farewel* for the present.

"If the Governor, in issuing the proclamation, acted on a conviction of its propriety (and he has most expressly declared, he did) he derives a satisfaction, and honour from his firm, and open avowal, which *he* will *hardly* be induced to relinquish and shelter himself under the infamous doctrine of your most servile adulation—'*that a Governor is a King, and can do no wrong.*' *So rash is your solicitude to make your court, that you do not perceive the affront you offer, *even*, to his veracity in the very nature of your address. Such patriotism now it is explained, to be sure, must command the utmost confidence of the free people of Maryland.

"What would John Hampden, if alive *here*, say to such patriots?

"With what indignation must the confederated *Independent Whigs* be inflamed, when informed that fees in England have been settled by the courts, that the doctrine has been there advanced, '*no Officer is bound to act unless his fee be paid;*' that a Chancellor has '*stopp'd the very hearing of a cause, because fees were not paid;*' and that a Chief Justice has declared, even from the bench, that a suitor is '*liable to an Attachment of Contempt, on his refusal to pay fees?*' *Such Tyranny* has, verily, been practised without any dread of *Infamy, Exile, or Death.* O Tempora, O Mores."

ANTILON.

*By statute, if a Governor, or deputy Governor of any plantation, or colony, be guilty of oppressing any subject within his government, or any other crime, or offence contrary to the Laws of the Realm; such oppression, etc., shall be enquired of and determined in the Court of King's Bench, or before Commissioners assigned by the Crown, and such punishments inflicted as are usually inflicted for offences of the like nature committed in England—and yet the Confederates apply the maxim, "the King can do no wrong," to a Governor—what gross ignorance, what miserable flattery!

CHAPTER 8.

SECOND LETTER OF FIRST CITIZEN.

1773. Charles Carroll, of Carrollton, and Daniel Dulany were now at arms against each other in the exciting field of forensic and political discussion. Both were men of legal ability and of European culture. Carroll, at this time, was thirty-six years old, Dulany had reached fifty-two, and was in full possession of all his "ripened powers." If Dulany had had experience in the weighty affairs of state, Carroll did not enter the lists entirely unequipped. Culture, travel, legal learning and heredity were his, with the leisure of wealth and experience in professional oratory, and all his faculties impelled to exercise their greatest ability by a high spirit inflamed to the intensest opposition by the frequent attempts of "the powers, that" were, against his own personal rights and the liberties of his fellow citizens. This was, however, his first public presentation to the province; nor, indeed, was he yet known to the people at large. The faithful editor of the *Gazette* guarded the authorship of the letters with sacred sanctity. Dulany was irritated from the start. His anger centered upon the authors of the communications to which he was replying, who were charged to be a band of "Confederates or Independent Whigs." One of these he singles out and speaks of him thus—"After the experience of having nearly ruined the party, of whom the importance of powers of superior wealth, and superior talents, placed him at the head—After the experience of greater benefits having been derived from his most implacable enmity, than could have been from the utmost exertions of his most cordial friendship, (my allusion is sufficiently intelligible) what admirable firmness must *that man* have, who will persist in the same course. If

actuated by the motive of the unhappy spirit, who feels some relief, in his torments, from the agonies of others, his persistence might be accounted for; but this hypothesis must fail; for miscarriage has ever attended his efforts to distress, and benefits redounded from his best concerted schemes to destroy—how forlorn his situation! tormented when enactive—disappointed when active—incapable of relief, but from another's pangs, and incapable to inflict them."

To this Mr. Carroll in his second letter, says: "The First Citizen avers (and his word will be taken sooner than Antilon's) that he wrote the dialogue between the two citizens published in the *Maryland Gazette* of the 4th instant, without the advice, suggestion or assistance of the supposed author or coadjutor."

Carroll had, as an adversary, one whom victory had rarely failed to crown, and even repulse by whom, could not discredit. Dulany was the equal of Carroll in social position and legal education,—his superior in age and familiarity with public affairs, since Dulany, as his opponent, in one of his letters taunted Carroll with being a disfranchised citizen on account of his Roman Catholic faith, and could not take part in political and legislative matters. Dulany had the polish of daily profound research; he knew the history and had the precedents of the province at his fingers' ends; he was a lawyer whose opinions even judges at home and abroad sought to aid them in the elucidation of intricate cases. Joined to these elements of preparation, Dulany was a protestant, in an almost exclusively protestant government, and he argued to protestant auditors. Carroll bore the odium of an outlawed religion, was under the band of political disfranchisement for adhering to its faith, and to the sneers of his political opponents for being a Roman Catholic "could only wield the weapons of a brave spirit and the accomplishments of a cultivated intellect." Thus equipped, the two gladiators entered the arena of the public press.

Mr. Carroll, writing under the *non de plume* of First Citizen took his press title from the character, represented

Dulany's first letter, who assumed the position of defending the people's rights and in opposing Governor Eden's proclamation. Dulany's journalistic name is more obscure. The word "Antillon" is a Spanish surname; but no member of the family Antillon appears to have acquired such fame at that period, 1773, to warrant the use of the name as a newspaper cognomen.

The word "Antillon," the nearest approach to "Antilon," is found alone in the Spanish dictionary, and is defined by D. Roque Barcia as "*Especie de emplasto astringente*," a specie of stringent plaster. Mr. Richard J. Duvall, clerk in the Naval Academy Library, after much diligent search by others as well as himself, was the first to find the word "Antillon." The author had the valuable aid of three Spanish scholars—Professor A. N. Brown, Librarian of the Naval Academy; Professor P. J. des Garennes, and Assistant Professor C. V. Cusachs, instructors at the Naval Academy. The combined information gathered from them is—that the word "Antillon" is never spelled with one "l;" that the second "l" gives the sound of "yon" to the letters "on," where they are finals; and that, probably, to anglicise "Antillon," Mr. Dulany dropped one "l." Prof. des Garennes agrees with the author that Mr. Dulany, possibly, depended on his memory, without consulting the dictionary, and spelled the word incorrectly. As it stands, the weight of evidence suggests, at least, that Mr. Dulany intended to use the word "Antillon," and that he had a significant meaning in applying the name to his communication—it was a stinging, drawing plaster, which would draw the poison, or virus, from the meritricious arguments of First Citizen. The use of the word, by Mr. Dulany, would show a profound knowledge of the Spanish language, as the word Antillon is rare and now almost obsolete. This is another evidence of the broad culture of the most distinguished lawyer of Colonial America.

The second letter of Mr. Carroll appeared in the *Gazette* of March 11th. It said:

"*Though* SOME *counsellors will be found to have contributed their endeavours, yet there is* ONE, *who challenges the infamous pre-eminence, and who by his capacity,* craft, and arbitrary counsels,* *is entitled to the first place among these betrayers of their country.*"

Hume's Hist. of Eng., Vol. V., p., 243, 4 to. edit.

"The most despotic counsels, the most arbitrary measures, have always found some advocates, to disgrace a free nation: when these men, in the room of cool, and dispassionate reason, substitute virulent invective, and illiberal abuse, we may fairly presume that arguments are either wanting, or that ignorance and incapacity know not how to apply them.

"Considering the known abilities, as a writer, of the person pointed out to be the principal adviser, of the Proclamation, considering too, his legal and constitutional knowledge, we can hardly suppose, if solid reasons could be adduced in support, or extenuation of that measure, but what they would have been urged, with all the force of clear, nervous and animated language. There will not, I amagine, be wanting lawyers, to undertake a refutation of *Antilon's* legal reasoning in favour of the Proclamation; I shall therefore examine his defence of it, rather upon constitutional principles, and endeavour to shew, that it is contrary to the spirit of *our constitution* in particular, and would, if submitted to, be productive of fatal consequences: but previous to my entering upon this enquiry, it will be necessary to expose the '*shameless effrontery*,' with which *Antilon* has asserted facts, entirely destitute of truth, and from which he has taken occasion to blacken the character of a gentleman, totally unconnected with the present dispute. Who that gentleman is, no longer remains problematical; the place of his education, and his age, have been mentioned, to fix the conjectures of the publick, and to remove all doubt. '*He, instigated by inveterate malice, has invented falsehoods for incorrigible folly to adopt, and indurated impudence to propagate.*' Of this *Antilon*

*The words in small Roman letters are substituted instead of the words *enterprise, and courage*, made use of by the historian.

has confidently accused him; but upon what proof? on no other than his own conjecture. The first Citizen avers (and his word will be taken sooner than *Antilon's*) that he wrote the dialogue between two citizens, published in the *Maryland Gazette* of the 4th instant, without the advice, suggestion, or assistance of the supposed *author* or *coadjutor*. But the first Citizen and the Independent Whigs, are most certainly confederated; they are known to each other; an assertion this, *Antilon*, equally rash and groundless with your former. Why do you suppose this confederacy? From a similitude of sentiments with respect to your conduct, and Proclamation? If so, then indeed are nine-tenths of the people of this province confederated with the first Citizen. The Independent Whigs, however, as it happens, are unknown to the first Citizen; of their paper he had not the least intelligence, till he read it in the *Maryland Gazette* of the 11th instant: he now takes this opportunity of thanking those gentlemen, for the compliments, which they have been pleased to bestow on his endeavours, to draw the attention of the publick, from other objects, to the real authors, or rather *author* of all our evils.

"With what propriety, with what justice can *Antilon* reproach any man with malignity, when, stimulated by that passion, he accuses others without proof of being confederated with the first Citizen, and from mere suspicion of so treasonable a confederacy, vomits out scurrility and abuse against imaginary foes? Not content with uttering falsehoods, grounded solely on his own presumption, he has imputed the conduct of '*one of the confederates!*' to a motive, which if real, can only be known to the great searcher of hearts. This *confederate* is represented '*as wishing most devoutly*' (a pious and christian insinuation) for an event of all others the most calamitous, the death of a most loved parent; ungenerous suggestion! unfeeling man! do you really entertain such an opinion of the son? Do you desire that the assigned cause of the imputed wish should have its intended effect, create uneasiness, a coolness, or distrust? What behaviour, what incident, what passage of his life, war-

rant this your opinion of the son, supposing it to be real? That they have always lived in the most perfect harmony, united by nature's strongest ties, parental love, filial tenderness, and duty, envy itself must own. *That father*, whose death the son devoutly wishes for, never gave him cause to form a wish so execrable; he has been treated with the utmost affection, and indulgence by the father; in return for all that tenderness and paternal care—

> "'Him, let the tender office long engage,
> To rock the cradle of reposing age;
> With lenient arts extend a father's breath,
> Make languor smile, and smooth the bed of death.'
>
> —Pope.

"I cannot conceive what '*the generous and spirited behaviour of one of the confederates*' (who by the bye is no confederate) on a former occasion, has to do with the present question, unless to divert the attention from the subject, or to introduce a specimen of satire, and falsehood prettily contrasted in antitheses. The period, I confess, runs smooth enough; but *Antilon*, let me give you a piece of advice, though it comes from an enemy, it may be useful; whenever you mean to be severe, confine yourself to truth; illiberal calumny recoils with double force on the calumniator. An expression of the first Citizen has been construed into a '*preparation*' to malign the minister's son; if this intention could be fairly gathered from the words inserted in the note (A) (and there are no other to give the least colour to the charge) it would cause the first Citizen unfeigned concern. To wipe off the imputation, I must beg leave to refer the reader to the dialogue published by the first Citizen; he will there see, that the 2d Citizen intimates, a confidence ought to be placed in *our ministers*, because they are men of property, '*and have as deep a stake in the safety of the Constitution as any of us.*' In answer to this reasoning, the first Citizen observers, that a minister's wealth

(A)—Hopes may be entertained that the *good thing* like a precious jewel will be handed down from father to son.

is not always a security for his honesty; because, to increase that wealth, to maintain his seat, and to aggrandize his own, he may be tempted to enlarge the powers of the crown, (the first Citizen speaks generally) more especially should he (the minister) have any expectation of transmitting his post to one of his own family, to his son for instance. 'It has been the maxim (says a judicious historian) (1) of English princes whenever popular leaders encroach too much on royal authority, to confer offices on them, in expectation that they will afterwards become more careful, not to diminish *that power*, which has become *their own*.' It is not even asserted, that the minister does actually entertain a hope of securing his office to his son, but that, possibly, he may entertain such a hope. It may be impolitic in the supreme magistrate, to grant offices to many of, and to continue them in the same family, but it is natural for the head of that family, to wish it; if even to wish to transmit an office to his son, should be thought culpable in the father, yet still is the son exempt from all blame.

"I must answer a question or two, put by *Antilon*, before I go into an examination of his reasons, in support of the Proclamation, that the argument may be as little interrupted, and broke in upon, as possible, by topics foreign to that enquiry. *Antilon* asks, 'What do the confederates mean (he should have said what does the first Citizen mean) by dragging to light—made to feel the resentment of a free people—endeavour to set the power of the supreme magistrate above the laws—dread of such fate.'—Answer:—*By dragging to light*, nothing more was meant, than that the house of delegates should again endeavour, by an humble address to the Governor, to prevail on him to disclose the ill ADVISER, or '*those ill advisers who have most daringly presumed to tread on the invaluable rights of the freemen of Maryland*.'—'*Made to feel the resentment of a free people*,' may need a little explanation; the sense of the subsequent quotations, is sufficiently obvious; if the real *adviser*, or advisers, of the Proclamation,

(1) Hume.

could be discovered, in my opinion (I do not mean to dictate, and to prescribe to the delegates of the people) they ought, in justice to their constituents, humbly to address the Governor, to remove him, or them, from his counsels, and all places of trust, and profit, if they be invested with such, not merely as a punishment on the present *transgressor*, or transgressors, but as a warning to future counsellors, not to imitate their example. I have dwelt the longer on the meaning of the words—'*made to feel the resentment of a free people*,' because I perceive pusillanimity and conscious guilt have inferred from the expression, 'a sanguine hope in the '*confederates*,' that the free people of Maryland will become a lawless mob at their instigation, and be the dupes of their infernal rage.'

"Sleep in peace, good *Antilon*, if thy conscience will permit thee; no such hope was conceived by, a thought of the sort never entered the first Citizen's head, nor (as he verily believes) of any other person. The first Citizen rejects with horror, and contempt, the cowardly aspersion. But should a mob assemble to pull down a certain house, and hang up the owner, methinks, it would not be very formidable, when headed and conducted by a *monkey*, against a chief of such *spirit* and *resolution*. Sarcasms on personal defects, have ever been esteemed the sure token of a base and degenerate mind; to possess the strength and graces of your person, the gentleman alluded to, would not exchange the infirmities of his puny frame, were it, on that condition, to be animated by a soul like thine.

"I have at length gone through the painful task, of silencing falsehood, exposing malice, and checking insolence. The illiberal abuse so plentifully dealt out by *Antilon*, would have been passed over with silent contempt, had he not so interwoven it with positive assertion of facts, that the latter could not be contradicted, without taking some notice of the former.

"I shall now examine *Antilon's* reasons in justification of the Proclamation, and after his example, I shall first compare the two transactions, the *Proclamation*, and the *assessment of ship-money*.—That the latter was a more open, and daring violation

of a free constitution (B) will be readily granted; the former, I contend, to be a more disguised, and concealed attack, but equally subversive, in its consequences, of liberty.—*Antilon's* account of the levy of ship-money, though not quite so impartial as he insinuates, I admit in the main to be true—'The amount of the whole tax was very moderate, little exceeding 200,000 lbs; it was levied upon the people with justice and equality, and this money was entirely expended upon the navy, to the great honour and advantage of the kingdom.'—At that period the boundaries between liberty and prerogative were far from being ascertained; the constitution had long been fluctuating between those opposite, and contending interests, and had not then arrived to that degree of consistency and perfection, it has since acquired, by subsequent contests, and by the improvements made in later days, when civil liberty was much better defined, and better understood. The assessment of ship-money received the sanction of the judges—'After the laying on of ship-money, Charles, in order to discourage all opposition, had proposed the question to the judges, '*whether in a case of necessity, for the defence of the kingdom, he might not impose this taxation; and whether he was not sole judge of the necessity.*'—These guardians of law and liberty, replied with great complaisance (reflect on this, good reader) 'that in a case of necessity, he might impose that taxa-

(B) The most open and avowed attacks on liberty are not perhaps the most dangerous. When rigorous means—"the arbitrary seizure of property and the deprivation of personal liberty are employed to spread terror, and compel submission to a tyrant's will" they rouse the national indignation, they excite a general patriotism, and communicate the generous ardor from breast to breast; fear and resentment, two powerful passions, unite a whole people, in opposition to the tyrant's stern commands; the modest, mild, and conciliating manner, in which the latent designs of a *crafty minister* come sometimes recommended to the publick, ought to render them the more suspected "*timeo Danaos et dona ferentes;*" the gifts, and smiles of a minister should always inspire caution, and diffidence. There is no attempt, it is true, in the Proclamation "to subject the people indebted to the officers for services performed to any execution of their effects or *imprisonment* of their persons—*on any account.*"—If the judges however should determine costs to be paid, according to the rates of the Proclamation, *execution* of a person's effects, or *imprisonment* would necessarily follow his refusal to pay those rates.

tion, and that he was sole judge of the necessity.' The same historian speaking of that transaction concludes thus: 'These observations alone may be established on both sides. *That* the appearances were sufficiently strong in favour of the King, to apologize for his following such maxims; and *that*, publick liberty must be so precarious, under this exorbitant prerogative, as to render an opposition, not only excusable, but laudable in the people.'—But I mean not to excuse the assessment of ship-money, nor to exculpate Charles, his conduct will admit of no good apology.

"Now let us take a view of the Governor's Proclamation, advised by the minister, and of all its concomitant circumstances.—A disagreement in sentiment, between the two branches of our legislature, about the regulation of officers' fees, occasioned the loss of the inspection law in the month of November, 1770.—Some proceedings in the land-office, had created a suspicion in the members of the lower house of that assembly then sitting, 'That the government had entertained a design, in case the several branches of the legislature should not agree in the regulation of officers' fees, to attempt establishing them by Proclamation.' To guard against a measure '*incompatible with the permanent security of property and the constitutional liberty of the subject*,' they in an address to his Excellency asserted, 'That could they persuade themselves, that his Excellency could possibly entertain a different opinion, they should be bold to tell him, that the people of this province will ever oppose the usurpation of such a right.' To which address the Governor returned this remarkable answer in his message of the 20th day of November, 1770, 'That his lordship's authority had not yet interposed in the regulation of fees of officers, nor had he any reason to imagine, it would interpose in such a manner as to justify a regular opposition to it.' (C)

(C) From the words in the text, I think it is evident, the minister had at that very time determined on issuing the Proclamation; should he afterwards be reproached with a breach of promise, he had his answer ready, the Proclamation was not issued in *such a manner*, as to justify *a regular opposition*, it was only issued with a view to prevent the *extortion of officers*—for this reason I have called the minister's promise a *seeming* promise.

"Notwithstanding this declaration, a few days after the prorogation of that assembly, the Proclamation of the 26th day of November (the subject of the present controversy) was issued, contrary to a seeming promise given by the minister (for I consider the Governor's speeches and messages as flowing from his minister's advice) and contrary to the opinion entertained by the minister himself, of its legality. The accusation will not appear too rash, when we reflect on the abilities of the man, his experience, his knowledge of the law and constitution, and his late flimsy and pitiful vindication of the measure. He knew that a 'similar Proclamation published in the year 1733 had agitated and disjointed this province till the year 1747. The evils, which were thereby occasioned, ought strongly to have dissuaded a second attempt, to exercise such power.' *Antilon* has admitted this fact, and has attributed 'the most violent opposition that ever a Governor of Maryland met with' to this very measure—'He (Ogle) was so well convinced of the authoritative force of the Proclamation, for settling fees of officers, that he expressly determined, as Chancellor, by a final compulsory decree, fees should be paid upon the authority, and according to the very settlement of the Proclamation,' which of his own will and mere motion he had pre-ordained as Governor.

"What is the meaning of all this in plain English? Why, that Ogle made himself both judge and party; like the French King, he issued out his edict, as a law, which he inforced in his own court, as judge. I am unwillingly, and unavoidably drawn into the censure of a man, who by his subsequent conduct, which was mild and equitable, fully atoned for the oppressions (shall I call them errors) of his former administration.

"*Antilon* asks, 'What did he (Ogle) deserve, infamy, death, or exile?' No, not quite so severe a punishment, *Antilon*; he only deserved to be removed from his government, and not even that punishment, if he was directed, advised and governed by such a minister as thou art; for in that case, the disgrace, and removal of the mintster would have been sufficient, and

would probably have restored ease, security, and happiness to the people. But if Eden should follow Ogle's example, what then? Eden is a Governor, a Governor is a King, and a King can do no wrong, ergo, a Governor may cut the throats of all the inhabitants of Maryland, and then pick their pockets, and will not be liable to be punished for such atrocious doings; excellent reasoning! exquisite wit and humor! If you, *Antilon*, should still be hardy enough, to continue to inspire the same counsels, which have already set this province in a flame, and the Governor, when warned, and cautioned against your pernicious designs, should still listen to your advice, in opposition to the inclination and wishes of the people, over whom he has the honour to preside, I confess, I should be one of those, who would most heartily wish for his removal; does this look like flattery, *Antilon?* I scorn the accusation. The first Citizen has always treated his Excellency with that respect, which his station commands, and with that complaisance, which is due from one gentleman to another; to flatter, or to permit flattery, is equally unbecoming that character; *Antilon* accuses the *confederates*, of *fawning servility*, *extravagant adulation*, and *the meanest debasement;* yet this very man is not entirely exempt from the imputation of flattery—'They know not the man whom they thus treat.'

Cui, male si palpere, recalcitrat undique tutus

was an artful compliment paid by a courtly poet to the tyrant Augustus.—Ye, *Antilon*, I know the man; I know him to be generous, of a good heart, well disposed, and willing to promote, if left to himself, the happiness and welfare of the province; but youthful, unsuspicious, and diffident of his own judgment in matters legal and political (P) failings (if they

(P)—It cannot be supposed that the King can have a thorough knowledge of every department in his kingdom; he appoints judges, to interpret, and to dispense law to his subjects; ministers to plan, and digest schemes of policy, and to conduct the business of the nation; generals, and admirals, to command his armies and fleets; over all these he has a general superintendency, to remove, and punish such as from incapacity, corruption, or other misdemeanors may be unfit, and unworthy of the trust reposed in them—"the King cannot exercise a judicial office himself, for

deserve the name) that have caused him to repose too great a confidence in *you;* from this opinion of the man, from a persuasion of his good intentions, I was induced to apply to *him*, the maxim of the British constitution, '*the King can do no wrong*,' which you have so wittily, and humourously ridiculed. The Governor is no King; wonderful discovery! Who said he was? *You* comprehend the full force, and justice of the application, and *you* best know the reason of it; in order to elude, and defeat its aim, you affect to be witty, and not to take my meaning. You want to shelter yourself under the protection of the Governor, and to draw him, and all the Council, into a justification of measures *peculiarly yours*, by endeavouring to make them responsible for *your counsels*. 'There can be no difficulty in finding out his (the King's) ministers; the Governor and Council are answerable in this

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though justice and judgment flow from him, yet he dispenses them by his ministers, and has committed all his judicial power to different courts; and it is highly necessary for his people's safety he should do so, for as Montesquieu justly observes—There is no liberty if the power of judging be not separated from the legislative, and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be legislator; were it joined to the executive power, the judge might behave with all the violence of *an oppressor*."

"Here the Governor, who exercises the executive and a share of the legislative power holds and exercises also one of the most considerable judicial offices—for he is chancellor, a jurisdiction, which in the course of some years, may bring a considerable share of the property of this country, to his determinations." The Governor is so well satisfied of wanting advise, that in determining causes of intricacy, he always chuses to have the assistance of some gentleman, who from study, and a knowledge of the law, may be presumed a good judge, and able to direct him in cases of difficulty and doubt. He has recourse to the advise of his council in all matters of publick concernment; it is therefore highly probable he took the advise of some, or of ONE in the council before he issued the Proclamation. It is well known, that in England the *prime minister* directs and governs all his Majesty's other ministers; in Charles the IInd's time the whole care of Government, was committed to five persons, distinguished by the name of the *Cabal:* the other members of the privy council were seldom called to any deliberations, or if called, only with a view to *save appearances*.

character; *he cannot disavow* an act, to which his signature is affixed.' Have not many Kings of England revoked, and cancelled acts, to which their signatures were affixed? Have not some kings, too, at the solicitation of their parliaments, disgraced ministers, who advised these acts, and affixed to them the royal signature? The Governor is improperly called the King's minister; he is rather his representative, or deputy; he forms a distinct branch, or part of our legislature; a bill though passed by both houses of assembly, would not be law, if dissented to by him; he has therefore the power, *loco Regis*, of assenting, and dissenting to laws; in him is lodged the most amiable, the best of powers, the power of mercy; the most dreadful also, the power of death. A minister has no such transcendent privileges—To help, to instruct, to advise is his province, and let me add, that he is accountable for his advice to the great Council of the people; upon this principle, the wisdom of our ancestors grounded the maxim, 'The King can do no wrong.' They supposed, and justly, that the care and administration of government would be committed to ministers, whom, abilities, or other qualities had recommended to their sovereign's choice; lest the friendship and protection of their master should encourage them to pursue pernicious measures, and lest they should screen themselves under regal authority, the blame of bad counsels became imputable to them, and they alone were made answerable for the consequences; if liable to be punished for male administration, it was thought, they might be more circumspect, diligent, and attentive to their charge; it would be indecent and irreverential to throw the blame of every grievance on the King, and to be perpetually remonstrating against majesty itself, when the minister only was in fault. The maxim however admits of limitation.

Est modus in rebus; sunt certi denique fines,
Quos ultra, citraque, nequit consistere rectum.

"Should a King, deaf to the repeated remonstrances of his people, forgetful of his coronation oath, and unwilling to submit to the legal limitations of his prerogative, endeavour to subvert that constitution in church and state, which he swore

to maintain, resistance would then not only be excusable, but praiseworthy, and deposition, and imprisonment, or exile, might be the only means left, of securing civil liberty, and national independence. Thus James the second, by endeavouring to introduce arbitrary power, and to subvert the established church, justly deserved to be deposed and banished.

"The revolution, which followed, or rather brought on Jame's abdication of the crown, 'is justly ranked among the most glorious deeds, that have done honour to the character of Englishmen ' In that light the first Citizen considers it; and he believes the Independent Whigs entertain the same opinion of that event, at least, nothing appears to the contrary, save the malevolent insinuation of *Antilon*. It is high time to return to the Proclamation; your digressions, *Antilon*, which have occasioned mine, shall not make me lose sight of the main object. 'It is not to be expected that any man will bear reproaches without reply, or that he, who wanders from the question, will not be followed in his wanderings, and hunted through his labyrinths.' We have seen, the Proclamation was apprehended sometime before its publication, and guarded against by a positive declaration of the lower house—'*The people of this province will ever oppose the usurpation of such a right.*' Nevertheless *our minister*, regardless of this intimation, advised the Proclamation. It came out soon afterwards cloathed with the specious pretence of preventing extortion in officers. I shall soon examine the solidity of this softening palliative.

"In a subsequent session, it was resolved unanimously by the lower house, '*to be illegal, arbitrary, unconstitutional and oppressive.*' It was resolved also, '*That the advisers* (D) *of the*

(D) It is plain from the above resolve of the delegates, that they considered the Governor, not as my lord's minister, but as his deputy, or lieutenant, acting by the advice of others, nor pursuing his own immediate measure, and sentiments. It is no imputation on the Governor's understanding to have been guided by a counsellor, from whose experience, and knowledge, he might have expected the best advice, when he did not suspect, or did not discover the interested motive from which it proceeded; the minister has the art of covering his *real* views with *fair* pretences.

"And seems a saint, when most he plays the devil."

said Proclamation are enemies to the peace, welfare and happiness of this province, and to the laws and constitution thereof.'

"I shall now give a short extract from Petyt's *Jus Parliamentarium*, page 327, and leave the reader to make the application:—In a list of grievances presented by the commons to James the first, are Proclamations, of which complaining bitterly, among other things they say, 'Nevertheless, it is apparent, that Proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances and livelihood of men; some of them, tending to alter some *points of the law*, and make *them new: other some made shortly after a session of Parliament for matter directly rejected in the same session.*' *and some touching former Proclamation, to countenance and warrant the latter.*

"The Proclamation is modestly called by *Antilon*, '*a restriction of the officers*,' at another time, '*preventive of extortion*,' though in fact, it ought rather to be considered as a direction to the officers, what to demand, and to the people, what to pay, than a *restriction of the officers.* I appeal to the common sense and consciences of my countrymen; do ye think, that the avowed motive of the Proclamation, was the true and real one? If no such Proclamation had issued, would ye have suffered yourselves to be oppressed, and plundered by the officers? Would ye have submitted to their exorbitant demands, when instructed by a vote of your representatives, 'That in all cases where no fees are established by law, for services done by officers, the power of ascertaining the quantum of the reward for such services is constitutionally in a jury upon the action of the party?' To set this matter in a clear point of view, and to expose the hollow and deceitful shew of a pretended clemency, and tenderness for the people, it may not be improper to introduce a short dialogue between an officer and citizen.

"*Officer.* How wretched and distressed would have been the situation of this province, if the well-timed and merciful Proclamation had not issued.

"*Cit.* How so?

"*Officer.* The reason is obvious, had it not issued, we should have been let loose on our countrymen to live on free quarter, for every *little* piece of service we should have exacted a *genteel* reward; in a short time your pockets would have been pretty well drained, and to mend the matter, we might have pillaged and plundered, without being liable to be sued for extortion; 'for we could not be guilty of extortion merely in taking *money* or other *valuable thing* for our services, unless we were to take *more* than is due; it is obvious to common sense that there must be some established measure—or there can be no excess—That the term *more* cannot apply unless what is due be *ascertained* there must be a *positive*, or there can be no *comparitive*; let the result then be considered, if *something* be undeniably due, when a service is performed, and no *certain* rule or measure to *determine* the rate, should an officer take *as much as he can exact*, he would not commit *extortion* according to the legal acceptation of the term *extortion*.'

"*Cit.* This may be good law for aught I know, but if I could not sue you for extortion, I should still have a remedy.

"*Officer.* What, pray?

"*Cit.* I would only pay you what I thought reasonable.

"*Officer.* But suppose I should not think the sum tendered sufficient, and refuse to receive it.

"*Cit.* Why, then you might either go without any reward for your service, or you might sue me, to recover, what in your estimation would be adequate thereto, and thus leave the quantum of the recompence to be settled by a jury.

"*Officer.* This expedient did not occur to me; your condition, I own, would not have been quite so deplorable as I imagined.

"The plain answer of this citizen will be understood by many, who will not comprehend the more refined reasoning of the officer upon extortion; and I fancy the citizen's resolution in a like case, would be adopted by most people—*Antilon* has admitted That 'if the Proclamation had not the authority

to fix the rates according to which the officers *might* receive and *beyond which* they could not *lawfully receive*, it was not preventive of extortion, but whether it had or not *such authority* depended on its legality, *determinable in the ordinary judicatories.*' I should be glad to know whether its legality be determinable by the judges, or by a jury; if determinable by a jury, the liberty and property of the people will be exposed to less danger; were we sure of always having judges, as honest and upright as the present, the question, though of the most momentous concern, might perhaps be safely left to their decision; but our judges are removable at pleasure, some of them might be interested in the cause, and if suffered to establish their *own* fees would become both judge and party—a Governor, we have seen, decreeing as chancellor fees to be paid upon the authority of his *own* Proclamation, would fall under that predicament. Let us admit, by way of argument, that the decision of this question (the legality of the Proclamation) belongs properly to the judges; suppose they should determine the Proclamation to be legal; What consequences would follow? The most fatal and pernicious, that could possibly happen to this province; the right of the lower house to settle fees, with the concurrence of the other branches of the legislature, a right, which has been claimed, and exercised for many years past, to the great benefit of the people would be rendered useless, and nugatory. The old table of fees abounding with exorbitances and abuses, would ever remain unalterable; government would hold it up perpetually, as a sacred palladium, not to be touched, and violated by profane hands.

"Reasons still of greater force might be urged against leaving with the judges the decision of this important question, whether the supreme magistrate shall have the power to tax a free people without the consent of their representatives, nay! against their consent and express declaration, I shall only adduce one argument, to avoid prolixity.

"The Governor, it is said, with the advice of his lordship's council of state, issued the Proclamation: three of our provincial judges are of that council; they therefore advised a

measure as proper, and consequently as legal, the legality of which, if called in question, they were afterwards to determine. *Is not* this in some degree pre-judging the question? It will perhaps be denied, (for what will not some men assert, or deny?) That to settle the fees of officers by Proclamation, is not to tax the people; I humbly conceive that fees settled by the Governor's Proclamation, should it be determined to have the force of law, are to all intents and purposes, a tax upon the people, flowing from an arbitrary, and discretionary power in the supreme magistrate—for this assertion, I have the authority of my Lord Coke express in point—that great lawyer, in his exposition of the statute *de tallagio non concedendo* makes this comment on the word tallagium—'Tallagium is a general word and doth include all subsidies, taxes, tenths, fifteenths, impositions, and other burthens, or charge *put or set* upon any man, that within this act are all new officers erected with new fees *or old officers with new fees* for that is a tallage put upon the subject, which cannot be done without common consent by act of Parliament.' The inspection law being expired, which established the rates of officers' fees, adopted by the Governor's Proclamation, I apprehend, the people—(supposing the Proclamation had not issued) would not be obliged to pay fees to officers according to those rates; this proposition, I take, to be self-evident; now, if the Proclamation can révive those rates, and the payment of fees agreeable thereto, can be inforced by a decree of the chancellor, or by judgment of the provincial court, it will most clearly follow, that the fees are *new*, because enforced under an authority *entirely new*, and *distinct* from the act, by which those rates were originally fixed. Perhaps my Lord Coke's position will be contradicted, and it will be asserted, that fees payable to officers, are not taxes; but on what principle, such an assertion can be founded, I am at a loss to determine; they bear all the marks and characters of a tax; they are universal, unavoidable, and recoverable, if imposed by a *legal* authority, as all other debts; universal, and unavoidable, 'for applications to the publick offices are not of *choice* but of necessity, redress

cannot be had for the smallest or most atrocious injuries but in the courts of justice, and as surely as that necessity does exist, and a binding force in the Proclamation be admitted, so certainly must the fees thereby established, be paid in order to obtain redress.' There is not a single person in the community, who at one time, or other, may not be forced into a court of justice, to recover a debt, to protect his property from rapacity, or to wrest it out of hands, which may have seized on it with violence, or to procure a reparation of personal insults.

"Why was the inspection law made temporary? With a view no doubt, that on an alteration of circumstances, the delegates of the people, at the expiration of the act, with the consent of the Governor, and upper house, might alter, and amend the table of fees, or frame a new table.

"That the circumstances of the province are much changed since the enacting of that law in 1747, the Proclamation itself evinces, by allowing planters to pay the fees of officers in money, in lieu of tobacco, which alternative has considerably lessened the fees, and is a proof, if any were wanting, that they have been much too great. It was insisted on by the lower house, that a greater reduction of fees was still necessary; by the upper, that the fees were already sufficiently diminished, and that they would not suffer 'any further reduction of fees, than that, which must necessarily follow from the election given to all persons, to discharge the fees in tobacco, or money as may best suit them.' One would imagine that a compromise, and a mutual departure from some points respectively contended for, would have been the most eligible way, of ending the dispute; if a compromise was not to be effected, the matter had best been left undecided: time, and necessity would have softened dissention, and have reconciled jarring opinions, and clashing interests; and then a regulation by law, of officers' fees, would have followed of course. What was done? The authority of the supreme magistrate interposed, and took the decision of this important question, from the other branches of the legislature to itself: in a land of freedom

this arbitrary exertion of prerogative will not, must not, be endured.

"From what has been said, I think it will appear that the idea of a tax is not improperly annexed to a regulation of fees by Proclamation 'but if the idea be proper, then fees can be settled in no case except by the legislature, because it requires such authority to lay a tax; but the house of lords, the house of commons, the courts of law and equity in Westminster hall, the upper and lower houses of assembly have each of them settled fees'—they have so: the house of lords and the house of commons have that right derived from long usage; and from the law of parliament, which is *lex terræ*, or part at least of the law of the land. Our upper, and lower houses of assembly claim most of the privileges, appertaining to the two houses of parliament, being vested with powers nearly similar, and analagous (E) to those, inherent in the lords, and commons. '*The courts of law and equity in Westminster hall have likewise settled fees:*' by what authority? *Antilon* has not been full and express on this point: Have the judges settled the fees of officers in their respective courts solely by the King's authority, or was that authority originally given by act of parliament to his Majesty, and by him delegated to his judges? Admitting even, that the chancellor and judges of Westminster hall have settled fees, by virtue of the King's commission, without the

(E) I say nearly simillar; a perfect similitude cannot be expected; our upper house falls vastly short of the house of lords in dignity, and independence; our lower house approaches much nearer in its constitution to the house of commons, than our upper house, to the house of lords; the observation of a sensible writer on the assembly of Jamaica may be applied to ours.—"The legislature of this province wants in its two first branches (from the dependent condition of the Governor and council) a good deal of that freedom, which is necessary to the legislature of a free country, and on this account, our constitution is defective in point of legislature, those two branches not preserving by any means, so near a resemblance to the parts of the *British* legislature, which they stand for here, as the assembly does; this is a defect in our constitution, which cannot from the nature of things be intirely remedied, for we have not any class of men distinguished from the people by inherent honours; the assembly, or lower house has an exact resemblance of that part of the *British* constitution, which it stands for here, it is indeed an epitome

sanction of a statute, yet the precedent by no means applies to the present case. The judges in England have not settled their *own* fees—if the Proclamation should have the force of law, the commissary general, the secretary, the judges of the land office, who are all members of the council, and who advised the Proclamation, that is, who concurred with the *minister's* advice, may with propriety be said to have established their *own* fees. The Governor as chancellor decreeing his fees to be paid 'according *to the very settlement of the Proclamation*,' would undoubtedly ascertain, and settle his *own* fees; Would he not then be judge in his own cause? Is not this contrary to natural equity? 'Where a statute *is against common right and reason* the common law shall controul it, and adjudge it to be void; a statute contrary to natural equity, as *to make a man judge in his own cause* is likewise void, for *jura naturae sunt immutabilia*.' The quotation from Hawkins given by *Antilon*, militates most strongly against him; the chief *danger of oppression*, says the serjeant, is *from officers being left at liberty to set their own rates* on their labour, and make their *own demands*. Have not the officers who advised the *Proclamation*, and the Governor who issued it, in pursuance of their advice *set their own rates*, and made *their own* demands? Answer this question, *Antilon?* If you remain silent, you admit the imputation; if you deny it, you will be forced to

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of the house of commons; called by the same authority, deriving its powers from the same source, instituted for the same ends, and governed by the same forms; it will be difficult, I think to find a reason, why it should not have the same powers, the same superiority over the courts of justice, and the same rank in the system of our little community, as the house of commons in that of Great-Britian. I know of no power exercised by house of commons for redressing grievances or bringing publick offenders to justice, which the assembly is incapable of—I know of none, which it has not exercised at times except that of *impeachment* and this has been forborn, not from any *incapacity* in that body, but from a defect in the power of the council; an impeachment by the house of commons in England, must be heard in the house of lords, it being below the dignity of the commons, to appear as prosecutors, at the bar of any inferior court." The powers therefore of the house of commons, and of our lower house being so nearly similar, their respective privileges also must be nearly the same—see the privileges of the island of Jamaica vindicated.

disavow the advice, you gave. The Proclamation is sometimes represented by *Antilon* as a very harmless sort of a thing—it has no force, no efficacy, but what it receives from its legality '*determinable in the ordinary judicatories.*' He has not indeed told us expressly, who are to determine its legality; if the the judges of the provincial court are to decide the question, and they should determine the Proclamation to be legal, in that case, I suppose, an appeal would lie from their judgment, to the court of appeals—Would not an appeal to such a court, in such a cause, be the most farcical and ridiculous mummery ever thought of? All that has been said against the Proclamation, applies with equal or greater force against the instrument, under the great seal for ascertaining the fees of the land office. *Antilon* having noticed 'That in consequence of a commission issued by the crown, upon the address of the British house of commons, the lord chancellor *by the authority of his station* and by and with the advice and assistance of the master of the rolls, ordered, that the officers of the court of chancery should not demand or take any greater fees for their services, in their respective offices, than according to the rates established'—I have thought proper to insert in the note (F) referred

(F) *Antilon* infers from this argument, that the Governor has the same power in this province. In England, the King originally paid all his own officers; nothing therefore could be more consistent with the spirit of the constitution, than that *he* should establish the wages, *who* paid them. It is not so in this country, nor is it at present the case in England: they are now paid out of the pockets of the people; sheriffs, and many other officers have therefore their fees ascertained by act of parliament, and in those cases, where the fees given originally by the crown, are now established by custom, the parliament claims, and has exercised a power of controul over them, as will appear by the following quotations: "The commons ordered in lists of all the fees taken in the publick offices belonging to the law, which amounted annually to an incredible sum *most of it to officers for doing nothing;* but the enquiry was too perplexed, and too tedious for any effectual stop being put to the evil within the period of one session"—Tindal's continuation of Rapin's history.

Extract of a report of a committee of the house of commons impowered to inquire into the state of the officers' fees belonging to the courts in Westminster hall—April, 1752.

"Among the various claims of those, who now call themselves officers of the court of chancery, none appeared more extraordinary to the com-

to, some particulars relating to a similar measure, for the information of my readers, and to shew, that a regulation of officers' fees, fell under the consideration of the house of commons, and that the same encroaching spirit of office, which has occasioned such altercations, heart-burnings, and confusion in this province, has prevailed also in the parent state. The settlement of fees by order of the chancellor, under his Majesty's commission, issued pursuant to an address of the house of commons, is not, I will own, a tax similar to ship-money. But a regulation of fees by Proclamation, contrary to the express declaration of our house of burgesses, is very similar thereto. (G).

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mittee, than the fee of the secretary, and clerk of the briefs, who upon grants to enable persons to beg, and collect alms, claim, and frequently receive a fee of forty, fifty, or sixty pounds, and the register takes besides twelve or thirteen pounds for stamping and telling the briefs, which fees, with other great charges upon the collection, devour three parts in four of what is given for the relief of persons reduced to extreme poverty by fire, or other accidents." The committee closing their report with "observing how little able or *willing* many officers were to give any satisfactory account of the fees, they claim, and receive," came to the following resolution :

Resolved, "That it is the opinion of this committee that the long disuse of publick enquiries into the behaviour of officers, clerks, and ministers of the courts of justice has been the occasion of the encrease of unnecessary officers and given encouragement to the taking *illegal fees*.

Resolved, "That it is the opinion of this committee that the *interest*, which a great number of *officers* and *clerks* have in the proceedings of the court of chancery has been a principle cause of extending bills, answers, pleadings, examinations and other forms, and *copies of them* to an unnecessary length to the great delay of justice and the oppression of the subject.

Resolved, "That it is the opinion of this committee that a table of all the officers, ministers, and clerks, and of their fees in the court of chancery should be fixed, and established by authority, which table should be registered in a book, in the said court, to be at all times inspected *gratis*, and a copy of it signed and attested by the judges of the court, should be returned to each house of parliament, to remain among the records." If the commons had a right to enquire into the abuses committed by the officers of the courts of law, they had (no doubt) the power of correcting those abuses, and of establishing the fees, had they thought proper, to be paid to the officers of those courts.

(G) Because it is a tax upon the people without the consent of their representatives in assembly, as has been, I hope, demonstrated to the satisfaction of my readers.

"Exclusive of the above reasons, another very weighty argument, arising from the particular form of our provincial constitution, may be brought against the usurped powers of settling fees by Proclamation, and against the decision of its legality, in our '*ordinary judicatories.*' We know, that the four principal officers in this province, most benefited by the Proclamation, are all members of the upper house; I have said it, and I repeat it again, a tenderness, a regard for those gentlemen, a desire to prevent a diminution of their fees, have hitherto prevented a regulation of our staple; in a matter of this importance, which so nearly concerns the general welfare of the province, personal considerations and private friendships, shall not prevent me from speaking out my sentiments with freedom; neither shall antipathy to the man, whom in my conscience I believe to be the chief author of our grievances, tempt me to misrepresent his actions, 'or set down ought in malice'—neither a desire to please men in power, nor hatred of those, who abuse it, shall force me to deviate from truth. 'But the present Proclamation is not the invention of any daring ministers now in being' who said he was the inventor? *The minister now in being* has revived it only, in opposition to the unanimous sense of the people, expressed by their representatives, after a knowledge too of the evils, and confusion, which it heretofore brought on the province. Dismayed, trembling, and aghast, though sculking behind the strong rampart of Governor and council, this *Antilon* has intrenched himself chin deep in precedents, fortified with transmarine opinions, drawn round about him, and hid from publick view, in due time to be played off, as a masked battery, on the inhabitants of Maryland. I wish these opinions of '*Lawyers in the opposition*' would face the day, I wish the state, on which they were given was communicated to the publick, 'the opinion respecting the Proclamation is on no point which the minister for the time being aims to establish'—if in favour of the Proclamation, I deny the assertion; the Proclamation is a point which the *minister* of *Maryland* aims to establish, in order to establish his own power, and perquisites. *Antilon* asks 'If they

(the *confederates*) have any other measure besides the Governor's Proclamation, to arraign as an attempt to set the supreme magistrate above the law?' First evince, that the Proclamation is not such an attempt; till then, it is needless to point out others; without entering into foreign matter; I have already given you an opportunity 'of shewing me stripped of disguise *What I am*,' I have shewn what, *stripped of disguise*, you are—

'*Homo natus in perniciem hujusce reipublicae.*'

a man born to perplex, distress, and afflict this country."

First Citizen.

February 27, 1773.

CHAPTER 9.

THE THIRD LETTER OF ANTILON.

1773. The battle had begun with vizors down, but it was only fairly in earnest before the swords of each contestant had unlocked the helmet of his adversary and the Knights were facing each other with full knowledge of his opponent's identity. Antilon, rising with the superciliousness of uncontrolled anger, in his third letter, asks:

"After all, who is this man that calls himself a Citizen, makes his addresses to the inhabitants of Maryland, has charged the members of one of the legislative branches with insolence, because in their intercourse with another branch of the legislature they proposed stated salaries, and has *himself* proposed a *different* provision for officers; contradicted the most public and explicit declarations of the governor; represented *all* the council but *one* to be mere fools, that he may represent *him* to be a political parricide; denounced infamy, exile and death; expressed a regard for the *established* church of England? Who is he? He has no share in the legislature, as a member of any branch; he is incapable of being a member; he is disabled from giving a vote in the choice of representatives, by the laws and constitution of the country, *on account of his principles*, which are *distrusted* by those laws. He is disabled, by an express resolve, from interfering in the election of members, on the *same account.* He is not a Protestant."

To this contemptuous allusion to himself, First Citizen replied that he was:—

"A man, Antilon, of an independent fortune, one deeply interested in the prosperity of his country; a friend to liberty, a settled enemy to lawless prerogative."

Mr. Dulany did not escape his full share of unfriendly personal allusions and bitter criticisms. He was constantly designated "the prime minister" of the governor, and Eden was likened to an unfortunate king who was following the advice of wicked counselors. Nor did the public let Mr. Dulany forget that in his "Considerations" (1765) why England had no right to tax America without its consent, he had then taken ground directly opposite from the position he now occupied. The public could see no difference between a tax laid on them by imports and a tax laid for fees, which fees if not paid rendered a seizure of their property as a legal corollary. In Mr. Dulany's behalf it must be remembered, that he drew his distinction between a tax by a statute, without consent of those taxed, and fees paid public officers for services that they had rendered in the line of their official duty. He held that public officers were entitled to remuneration when their official services were performed. The weakness of Mr. Dulany's later position was that, under color of fees for services, unless the people had the right to regulate them, a corrupt government could rob them of every scintilla of their property.

Antilon's third letter appears in the *Gazette* of April 8th. Antilon said:—

———— "*Sub pectore toto*
Invidia intumuit, stultum furor abripuitque.

"Before I bestow any animadversion upon other impertinences, I shall endeavor to collect, and reduce to as much method, as they will bear, those parts of the Citizen's last performance, which have any apparent relation to the proclamation, and if the intelligent reader should be mischievously inclined to entertain himself with my distress, and for this purpose have recourse to my former paper, and my adversary's answer to it, I shall readily forgive him, if he smiles at the trouble I take to arrange desultory cavils, and extract out of the effusions of ignorance, and malice objections for refutation.

"'It is a very unfair thing (as Swift observes) in any writer to employ his ignorance, and malice *together*, because it gives his answerer *double* work. It is like the kind of sophistry

that the logicians call *two mediums*, which are never allowed in the same syllogism, a writer with a *weak head*, and a *corrupt heart* is an overmatch for any single pen, like a hireling jade, *dull*, and *vicious*, hardly able to stir, yet offering at every turn to kick.'

"In my former letter I laid before the reader for his examination, and comparison, the two transactions of the ship-money tax, and the proclamation, and shewed that the former imposed a direct tax on the people, and inforced the payment of it by the rigorous means of execution affecting the property, and personal liberty of the subject, and that the latter contained the sanction only of the Governor's threats of displeasure to officers dependant, and removeable without any enforcement extended to the people beyond that, which the ordinary courts might confer on the very ground of its legality. I also proved that *without some settled* rate, or standard *no* exaction of an officer could be punishable as *extortion*, and that judges and others not vested with a *legislative* authority, had settled, and ascertained the fees of officers for the very purpose of preventing the oppression of the subject, and concluded, the two transactions, were not only not equally arbitrary infractions of the constitution, but were entirely dissimilar. The Citizen professes his design to consider my reasons in defence of the proclamation, and after having 'granted that the assessment of ship-money was a more open, and daring violation of the constitution, still contends that the proclamation, though more disguised, is *equally subversive in its consequence* of liberty.' The reader will remember that the Citizen to support the *character* he has attributed to the proclamation, must prove it to be an *arbitrary tax*.

"He allows that the tax of ship-money was an 'open and avowed attack on liberty' and seems to apply to the proclamation the epithets, 'modest, mild, and conciliating.' He acknowledges that the methods pursued in levying the ship-money were the 'arbitrary seizure of property and deprivation of personal liberty' and that there 'is no attempt in the proc-

lamation to *subject* the *people* to any execution;' but, notwithstanding his admission of *so great difference*, he endeavours to maintain his position, that the proclamation is as subversive, *in its consequence*, of liberty, as the levy of ship-money was. 'The most daring attacks on liberty, he says, are not *perhaps* the most 'dangerous,' because extreme violence excites general indignation, and opposition; but the 'modest, mild, conciliating manner, in which the *latent* designs of a crafty minister come *sometimes* recommended, ought to render them the more suspected, and should always inspire caution, and diffidence,' let the operation, and effect of the proclamation determine its character; but, because the manner is modest, &c.—let not suspicion at once infer, that the design of it is to violate the peoples' rights; for if one measure is to be opposed, because expressed in an imperative stile, and attended with the most rigorous enforcements, and another measure is also to be opposed, because it is 'modest, mild, &c.' in the manner, and unattended by any enforcement, except what it derives from the law, it would be difficult, indeed, for the best intentions to escape censure. In speaking of the ship-money *exaction*, the Citizen admits my account of it to be, '*in the main* true,' but intimates that 'it is not *impartial*,' 'it is *in the main* true.' In what was it then not impartial? The exility of the insinuation shall not protect the principle of it, nor shall contempt so entirely extinguish indignation, as to hinder me from exposing the subdolous attempt. The appellation, 'Tyrant' has, I suspect, rubbed the fore. The 'tax' (says he) 'was *very moderate little exceeding*, £200,000 sterling—it was *levied* with *justice* and *equity*, etc.,' 'moderate?' When the people were plundered of every farthing of it? 'levied with justice and equity; when extorted by the rigours of distress, and imprisonment, in the most direct violation of every principle of liberty? The moderation, justice, and equity of a robber, who should suffer the plundered passenger to retain half a crown for his dinner, might be celebrated with equal grace and propriety. Again he whines—'the boundaries between liberty, and prerogative were far from being ascer-

tained.' What, had not Magna Charta so often (at least thirty-two times) confirmed the statute (he has referred to on another occasion) de tallagio non concedendo, the petition and act of rights (to mention no other) *most clearly* established the *principle*, that 'the people could not be taxed without their consent?' The boundary could not have been more clearly marked out by the utmost precaution of jealous prudence or more outrageously transgressed by the most determined, and lawless tyranny, and yet the Citizen, *the generous friend of liberty*, though he has adopted the pretences of a *notorious apologist*, has advanced them *without any view* to 'excuse the assessment of ship-money, or exculpate King Charles'—he means not to apologize, though he has adopted the very principles of the tyrant's apologist—again 'James the IId by endeavoring to introduce arbitrary power, and subvert the ESTABLISHED *church deserved* to be deposed, and banished, and the revolution *rather*' says the Citizen, '*brought about*, than *followed* King James' *abdication* of the crown.'

"Here reader you have another proof of the staunch whiggism of the *champion so properly* celebrated by our Independent Whigs. 'The revolution rather brought about, than followed King James' abdication?'

"Those great men, by whom the cause of national liberty was supported, entertained very different ideas from our *Independent Whigs* and their *champion*. They received their instruction IN *a very different school*. The commons voted that King James IId 'having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king, and people, and by the advice of jesuits, and other wicked persons, having violated the fundamental laws, and withdrawn himself out of the kingdom hath *abdicated* the government, and the throne is thereby become vacant, and that it hath been found by experience to be inconsistent with this protestant kingdom to be governed by a popish prince.'

"The abdication of James was, *the wrong done by him*, 'the government is under a *trust*, and acting against, is renouncing

it; for how can a man in reason, or sense, express a greater renunciation of a trust, than by the constant declaration of his actions contrary to that trust.'

"'The revolution rather brought about than followed the abdication.'

"The principles of this champion for whiggism having been developed, the *Independents*, perhaps, may doubt the propriety of their *political* attachment, when they consider the effect of the Citizen's suggestions is, that the revolution was *rather* an act of *violence*, than of *justice*, unless, indeed, the regard he has expressed for the *established* church, so *consistent* with his *religious* profession, should haply, divert their attention; for *this regard*, to be sure, is very commendable.

"That the proclamation restrains the officers is certain, and, having *this* effect, *if it has no other*, it is beneficial—if it has moreover, the effect of binding the people to pay, as well as the officer to receive according to the adopted rates, this effect flows from its legality, from the same principles, that the general protection, and security of men's rights are derived.

"The ship-money was levied upon the people, when *no part* of it was due—the officer can receive *nothing*, when *nothing* is *due*, and yet the Citizen alleges they *equally* correspond with the idea of *tax*, and of an arbitrary, tyrannical imposition—a tax cannot be laid unless by the *legislative* authority; but fees, the Citizen is constrained to admit, have been *lawfully* settled by the lords *alone*, by the commons *alone*, by the upper and lower houses separately, and by the courts of law, and equity in England—that these fees have not been settled by the *legislative* authority is *therefore* clear. What is then the plain result? *No* tax can be imposed, except by the *legislature*, but *fees* have been *lawfully* settled in the *manner premised* by persons, *not rested with legislative authority*, consequently the settlement of fees is *not a tax*. On this head the Citizen remarks, that the lords and commons derive 'their right from long usage, and the law of parliament which is part of the law of the land'—be it so, but the law of parliament, which is part of the law of

the land, doth not vest the lords, or the commons *alone* with authority to tax. The amount then of the Citizen's *reasoning* is, that the lords and commons *separately* settled fees, because they are *enabled* so to do by the *law of the land.* The judges have *no* share in the *legislature;* but *their* settlement of *fees* is *lawful* too, whence is their authority derived; but from *the law of the land*? The 'chief danger of oppression (says Hawkins in his treatise of crown law) is from officers being left at liberty to set their own rates, and make their own demands, therefore the law has authorized the judges to settle them.' How are *these settlements,* and the admission of their *legality* to be reconciled with the position that *fees* are *taxes?* 'The proclamation, says the Citizen, *is in its consequence,* as subversive of liberty, as the ship-money, if the judges should determine costs to be paid according to the rates, because execution would necessarily follow a refusal to pay those rates.'

"This objection, if I am not mistaken, suggests an additional argument to prove the settlement of fees to be, not only not an arbitrary tax, but a *legal unavoidable* act. When a suit is brought in a court of law, or equity, or carried by appeal from an inferior to a superior jurisdiction, and a final judgment, or decree is given, in which costs are awarded, these costs are *necessarily ascertained,* and the party against whom they are awarded is compelled to pay them. It will, I presume, be admitted to be just, and reasonable, that the person, obliged to apply to a court for justice, should be repaid the lawful costs attending the prosecution of his suit, and that a party, put to expence in defending himself against an illegal claim, should also be repaid by his adversary the legal costs attending his defence. What then are *these costs, which ought* to be awarded, and must necessarily be *ascertained,* by the judgment or decree? the fees of the lawyer, and of the officers constitute, sometimes, the whole, sometimes part of these costs, and the fees are not only such, as have been *actually* paid, but such too as the party is *lawfully chargeable* with. If he has paid, or stipulated to pay *more,* than the *legal* rates, he is entitled to no allowance for the excess. The *voluntary* pay-

ment or contract of the party would be a very inconvenient rule, if not controuled by some other standard—he might be induced by a *personal regard* for the lawyer, or the officer, or by *his enmity* to his antagonist to exceed the just proportion. The lawyer cannot lawfully demand, or receive his fee, which makes part of the costs, till the cause is finished; the officer too, generally, gives credit, beyond the time of passing the judgment, or decree, for fees, which also are part of the costs; but the suitor being chargeable the fees are included in the costs awarded by the judgment or decree, which may be immediately carried into execution. That the costs not only *may*, but *must* be awarded in various cases—that the fees of the lawyer, and officers are comprehended in the costs—that the costs must be ascertained in the judgment, or decrees—that therefore there must be some established *rule* or standard to *settle* and *fix* the *rates* of the *fees* which constitute the whole, or part of the costs, cannot be denied. The fees of the lawyer are settled by an act of assembly, the fees of the officer are not. There must be then some other authority to settle these fees, because they constitute part of the costs, and the judgment or decree, awarding the costs, must *necessarily* be *precise*. Justice cannot be administered without the exercise of such authority, and what is essential to the administration of justice, I must conclude, is not only, not an arbitrary, despotick imposition *extremely like* the levy of ship-money derogatory from the most fundamental principles of a free constitution; but is most consistent with, and even necessary to the general protection of the people; wherefore the *consequence* of an execution for costs is so far from fixing the opprobious character of an arbitrary, oppressive tax, subversive of liberty, that on the contrary, it proves the necessity of settled rates for the very purposes of justice. The Citizen *adopts* a quotation from 2d inst. to prove that the settlement of fees is a tax; but what Coke observes may be fully admitted without any proof, that *every settlement* of fees is a tax. If this had been his assertion it would be overruled by the clearest authorities, by every one of the instances of the settlement of fees already enum-

erated, as well as by other, depending upon the same principle. The statute, de tallagio non concedendo, speaking in the royal name, is to this effect, 'no tallage or aid shall by us or our heirs be put or levied in our kingdom *without the grant of parliament.*' Coke in his exposition of this part of the statute, observes that 'all *new* officers *erected* with *new fees*, or *old* officers with *new* fees are within this act; for that is a tallage put upon the subject, which cannot be done without common consent by act of parliament.'

"The offices, to which the proclamation relates, are not within the designation, *new offices*, and therefore so far the passage from 2d inst. is irrelative. The offices are *old* and *constitutional* such as do not depend upon any will or discretion of the supreme magistrate, whether they shall be continued, or cease; but must be preserved as functions, always exerciseable, and necessary to the execution of the laws. *New fees* are not to be annexed to such offices according to Coke's opinion, by which is plainly meant, that the *old*, or established fees belonging to these offices cannot be lawfully augmented, or altered without *an act of parliament.* That in the *old* offices, fees may be settled for necessary services, when there happens to be no prior provision, or establishment, and that such settlement is lawful, and in the case of costs, I have already considered, *indispensably necessary*, the instances enumerated evince.

"The judges determined that an under-sheriff should receive a fee of a person brought to the bar for, and acquitted of, a felony, 'because it was assigned to the officer by the *order* and *discretion* of the *court*, and that it was *with reason* and *good conscience* this fee was allowed by the court to the officer, *for the trouble* and *charge* he has with prisoners, and of his attendance on the court, as a *reward* for the service.' 21 H. 7. 17, 28.

"Fees not settled by the legislature, and which may be lawfully received, *are not taxes*, because it is not competent to *any* persons, not constituting the *legislature*, to *tax* the subject. The same authority distinct from the legislative, that *has* set-

tled, *may* settle the fees, when the proper occasion, of exercising it, occurs. '*Where there is the same reason, there is the same law.*' Wherefore I presume to think, that though the *old* or *established* fees are not to be altered, increased, or augmented, yet, when fees are *due*, and the *rates* of them are *not* established, they may be settled *without* the legislative authority, because the *principle* of the authority *remains*, and it ought to be *active*, when the *reason* of it *calls* for *exertion*. Though the Citizen had admitted that the lords *alone*, the commons *alone*, the upper and lower houses *separately*, the courts of law and equity, have lawfully settled the fees of their officers, and consequently fees so settled are not *taxes*, which cannot be laid but by the act of the *whole legislature*, *yet* has he cited 2d inst. to prove that *fees* are a *tax*—again from some proceedings of the house of commons, he infers a power in the commons *alone* to settle fees in the *courts*, for that he is of opinion *at one time fees are a tax*, at *another*, he *admits* they are *not* a tax, *again* he asserts that they *are* a tax, and *again* that they are *not* a tax.

"Quo teneam vul tus mutantem Protea nodo" (with what noose may I hold this Proteus so often shifting his forms.) Having given an extract of some proceedings of the house of commons upon an enquiry into fees received by the officers belonging to the law, and of the resolves of the committee, that 'it was their opinion the long disuse of publick enquiries into the behaviour of these officers had been the occasion of unnecessary officers, and illegal fees—that the interest of the great number of officers was the occasion of extending the forms to unnecessary lengths, of great delay, and oppression, and that a *table* of all the officers, and of *their fees* in chancery should be *fixed*, and *ascertained* by *authority*, which table should be registered in a book in that court, to be inspected at all times gratis, and a *copy* of it *signed* and *attested* by the *judges*, should be returned to each house of parliament to remain among the records,' the Citizen makes a *sagacious*, and *pertinent* observation, which gives an *adequate* proof of his constitutional knowledge, and logical abilities—'if the commons (says he) had a right to *enquire* into the abuses com-

mitted by the officers of the courts, *they* had, no *doubt*, the *power* of correcting these abuses, and of *establishing the fees* in those courts, *had they thought proper*.'

"Without doubt the parliament, or the general assembly may establish fees; but the Citizen's conclusion is, that the commons *alone* can, and the premises whence he draws his egregious inference are these—the commons have authority to enquire into the abuses committed by the law officers—so that his argument in form is this—*whenever* the *commons* have a *right to enquire* into any subject, *they* may *establish* whatever *they may think proper* concerning *that subject*.

> "Navim agere ignarus navis timet; abrotonum aegro
> Non audet, nisi qui didicit, dare; quod medico rum est
> Promittunt medici; tractant fabrilia fabri."
> "The ign'rant landman shakes with fear
> Nor dares attempt the ship to steer;
> He who ne'er learn'd the doctor's trade,
> To give ev'n southernwood's afraid;
> Profess'd physicians cure by rules,
> And workmen handle workmen's tools."

"The magnanimous citizen, however, undertakes *any thing*, though it must be confessed by his admirers, that a little more diffidence would impeach his understanding, no more than it would tarnish his modesty; but though the extract is entirely *destitute of all force in the Citizen's application of it*, yet it suggests an additional circumstance in favour of the proclamation, which his malevolence has arraigned, and his arrogance has censured, for the opinion of the commons may be justly inferred from these expressions in their resolves, 'a *table of all the fees should be fixed*, and established by *authority* that a *precise settlement of the rates* would be the *proper means* of *preventing extortion*,' according to Serjeant Hawkins' observation already cited, and from the expressions, 'the table of fees should be registered in a book open to inspection gratis, and a copy of this table *signed* and *attested by the judges* returned to each house of parliament,' it may also be justly inferred that the '*authority*' meant was *not reposed in themselves*, and *as they were to be informed by a copy, signed and attested by the judges*

of the *specifick* exercise of it, that the judges, who were to give information under their signatures, and official attestation, were understood to be the persons vested with the *authority* to *fix*, and *establish the fees*. The settlement of fees a tax, and yet the commons acknowledged the authority of the judges to make the settlement.

"Putat tonsor sibi poscere navim Luciferi rudis? exclamat Melicerta, perisse Epontem de rebus.

(A) 'Should a mere barber think to ask
A pilot's trust, (an ardous task)
Yet cannot, such a dunce is he,
An observation make at sea,
Well *Melicerta might exclaim
That he had lost all sense of shame.'

"That questions ought not to be prejudged is another of the Citizen's objections. This is very true in a proper application, but extremely absurd in the Citizen's—if there were no precedents, or established rules, the measures of justice might be very unequal, and the scales uneven and unsteady. 'Misera est servitus, ubi jus est vagum.' The utility of precedents consists in the *very effect*, which is the *ground* of the Citizen's objections, that *similar* cases are governed by them. Without *this* effect, contests would be infinite. What he calls *prejudging*, is that which is the consequence, the salutary, beneficial consequence of legal certainty, preventive of endless litigation, vexation, and distress. The judges must have therefore, some fixed, stable rule for the ascertainment of costs. Indeed, reader, I find it to be a very irksome task to encounter such extreme ignorance, blended with such exuberant vanity, pertinacious impudence, and connate malignity, and to unravel the contexture they have formed. I observed in my former letter, that the courts of law and equity had settled fees, and the Citizen asks by what authority. The passage in Hawkins,

(A) I have taken some liberty with Perseus but not more than the Citizen has done in his motto with Pym's Speech—
"*Neque enim lex æquior ulla est.*"

*The marine deity.

already quoted, answers the question. Admitting, however, that the judges have settled fees, the Citizen alleges the 'precedent does not apply.' Surely to prove that the settlement of fees is not a *tax*, which nothing less than the *full legislative authority* can establish, and therefore the precedent applies to destroy the very principle on which he has 'spent his feeble efforts' to prove the proclamation an arbitrary tax, as subversive of liberty as the levy of ship-money.

"Cereopithecus quam sapiens est animal, aetatem qui uno ostio nunquam committit suam, quia si unum ostium obsideatur, aliud perfugium gerit.

(B) So wise the monkey, that he ne'er confides
His safety to *one* passage; but provides
That, if th' adversary should *one* make sure,
Another then may his retreat secure.

"Lest the objection to the proclamation *that it is a tax* should be refuted, the *sagacious* Citizen has provided another *outlet* for escape. 'The precedents of judges having settled fees, says he, do not apply, because they have not settled *their own* fees; but the commissary, secretary, judges of the land-office, being members of the council, and advisers of the proclamation (that is) *concurring* with the advice of the *minister; may be said* to have established their own fees; and the governor (C) as *chancellor, decreeing* his fees according to the

(B) Here too, after the example of the Citizen, I have been a little free with Plautus.

(C) What the Citizen has remarked, in one of his notes, to prove it inconsistent with the security, which the constitution of England affords in the distribution of the legislative, executive, and judicial powers, for the governor to be chancellor, proceeds from his very crude ideas of the British policy—"were the judiciary power joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would then be legislator;" but this does not prove that if a branch of, and not the whole legislature exercises a judicial power, there would be this consequence. The lords who are a branch of the legislative exercise a judicial power. The king, in whom the executive power is lodged, exercises, personally, no judicial power, considering the royal dignity and pre-eminence the idea of his being a judge in an inferior, subordinate and controulable jurisdiction would be absurd, and if the judicial power should be reposed in him absolutely, and conclusively, and his

very settlement of the proclamation, would undoubtedly ascertain and settle *his own fees*, and be *judge in his own cause.*' Here the idea of tax is dropped. Who the *wicked minister* is, we shall be puzzled to find out. The commissary, secretary, and judges of the land-office *concurring with his advice*, he is not to be sought after in *this list* of officers. 'It may be said,' to be sure, Mr. Citizen, *anything* may be said—the proclamation however has no relation to the chancellor; *Plain Truth has sufficiently exposed the absurdity of this imputation. 'The governor *decreeing* his fees as chancellor!' 'He is generous, of a good heart; but youthful, unsuspicious, diffident.' I shall not analyse your composition; but pray, Mr. Citizen, let me ask, what reason, what experience, what probable conjecture have you to extenuate your affrontive insinuation? Has he ever been a judge in his own cause? Has he ever betrayed any symptom of an inclination to be so? Again at your *mischievous tricks* 'tam forma & mores sunt consimiles'

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decisions not subject to examination and controul on an appeal to a superior jurisdiction, there would be great danger of, because there would be no regular method to prevent, violence, and oppression—now the chancellor, though he exercises a judicial power, and is vested with the executive, as governor, cannot commit the violence, and oppression dreaded, because there is an appeal to a superior provincial jurisdiction, and his decrees may be reformed, or reversed, and an ultimate appeal too is provided to the king in council; and, moreover, he is removeable, accountable, and even punishable, for violence and oppression—whence then the danger to liberty from the chancellor's violence and oppression. In New York, and in the Jerseys, the governors are chancellors—in Virginia the governor, and also the members of the council, the executive, and two branches of the legislative exercise an extensive judicial power in matters of equity, law, and of crimes. Should any branch of the legislative, whether governor, upper, or lower house, assume, in any instance, all the powers legislative, executive, and judicial, without doubt, it would be an extreme violation of the constitution, and the Citizen's impartiality would severely condemn it, though a tenderness for his connexions may prevent his publick censures. A similar affection perhaps, inclined him to pass over a question, or two, in my former letter. I do not wish him to offend any of his connexions. Let those, whom he has honoured with his regard, still enjoy it, however opposite their political walks, political attachments, and the colours of their apparent political principles may have been.

*See the *Gazette*, No. 1436.

the proclamation has no relation to the judges of the land-office, their fees are settled in a different manner, and the legality of it does not depend upon any question of prerogative; but on the *power every owner has over his property*, to dispose of it upon such terms, as he thinks proper. The advice of the council was not asked on this subject. This regulation too you have represented to be as arbitrary as the ship-money assessment, and with equal facility you may prove it to be a tax, or a rigadoon.

"The governor and council were twelve in number, of whom two only can be said (I mean with truth) to have any interest in the effect of the proclamation. The governor was not to be *directed* by the *suffrage* of the council; he was to judge of the propriety of their *advice* upon the *reasons* they should offer. It cannot be asserted (I mean again with truth) that they were not unanimous, though the citizen has the assurance to affront them with the reproachful imputation of being implicit dependants on *one man*. The proclamation was the act of the governor flowing from his persuasion of its utility. He had promised, *publickly* and *solemnly promised* that 'if the prerogative should interpose in the settlement of fees, *he* would take good care to act on *mature consideration*, and what *he* should *judge* to be right and just, would be the *only* dictate to determine *his* conduct.' He again, as publickly, and solemnly declared that, 'so clear was his *conviction* of the propriety, and utility of a regulation to prevent extortion, and infinite litigation, if it was necessary, instead of recalling, he would renew his proclamation, and in stronger terms threaten all officers with his displeasure, who should presume to ask, or receive of the people any fee beyond *his restriction*.' In his proroguing speech he again *declared* that 'He had issued the proclamation solely for the benefit of the people, by *nine tenths* of whom, he believed it was so understood.' But you, Mr. Citizen, have asserted, an absolute, direct, impudent, malicious (I will give you, as it is upon paper, a *dissyllable*) falshood, that he was *not* determined by *his own* judgment, but by the dictate of a *man* whom sometimes you call a clerk, sometimes a register,

and sometimes minister, and that nine tenths of the people do not believe the proclamation issued for the purpose, so publickly, so solemnly declared. The contradiction, it must be confessed, is direct and pointed, and if advanced on sufficient grounds, the veracity, sincerity, and honor of—would be—but I know it to be an infamous, impudent calumny (characteristical of the author of it) prompted by the temerity of ungovernable malignity. To atone for this insolence, the maxim, 'the king can do no wrong,' is introduced, and on what principle? Not such as would allow an application to a—who should happen to be old, or middle-aged, or circumspect—He must be 'youthful, unsuspicious, &c. &c.'—really this seems to be an innovation, rather arbitrary—*legal maxims* have been understood to be *rather impliant:* however as *you* can so easily *garble moral* ones, who will dispute *your* address in modifying the legal? Would he but act as he should—alas! would he but—then 'he would be a little god below,' and be *worshipped accordingly;* something *more* than a king. 'The governor however, you say, is no king'—but yet again you tell us, 'kings have *revoked* proclamations, and *therefore*, though the governor has *affixed his signature*, he may disavow his act.' Again, 'He is *improperly* called the king's *minister*, he is *rather* his *representative*, or *deputy*. He forms a distinct branch of the legislature, and he has the power of life and death,' and as a representative, or deputy, cannot act *beyond*, or *out of* the *capacity* of his constituent, or principal, you have, Mr. Citizen, *clearly proved* in your *peculiar* style, that the governor is the *representative* or *deputy* of the king, *because* the king *cannot* execute a *judicial* office; and, the governor *can*—a grave refutation of such nonsense *about* the governor's being a king, and not a king, would be, indeed, ridiculous. The mean, foolish servility of the intended palliative offers an insult to HIS understanding, *whose* sincerity, veracity, and honor you have so insolently attacked. But to return to Serjeant Hawkins, and answer the question which, in the triumph of ignorance, you have proposed: 'Have not the officers who advised, and the governor who issued the procla-

mation, set their own rates?' No, I have shewn, they have not—your *law* case is nothing to the purpose, or I would shew it, *not to be law*. You may perceive, if not quite blind, that I have not by silence admitted the imputation, neither have I denied the advice I gave 'as far as I gave it:' but I deny (what your impudence, and *mendacity* have asserted) that *any one* man of the council was the dictator of the proclamation, though I avow it to be my opinion, the measure was expedient, and legal. I deny what you have asserted, and without reserve charge you with having outraged truth with the most impudent, and flagitious malice, on the mean base motive of engaging the passions of those, whom you have studied to delude by a feigned regard for the publick welfare, to assist you in the gratification of a narrow, personal, sordid enmity. Take this as an answer to all your desultory, base, malevolent assertions of the controuling power of a *wicked minister*, and blush, *if* you have any sense of shame left.

——————"pudet haec opprobria dici,
Et dici potuisse, & non potuisse refelli.

I have been the more direct, and explicit in my disavowal, lest your unprincipled confidence should cast a blemish upon the honour of the other members of the council, whom you aim to render *contemptible*, that you may make *one* man publickly obnoxious, who, despising the impotence of it, bids defiance to all the efforts of your malice.

"I alleged in my former letter that the proclamation, by restraining the officers, prevented extortion, and recited it at large that the reader might form his own judgment; but, says the Citizen, 'it ought rather to be considered as a *direction* to the officers what to demand, and to the people what to pay.' This word '*rather*' seems to be a favourite, it does not *assert*: it only *squeaks* insinuation, what is meant by 'direction?' It is a vague term, it is applied by the Citizen to the officers, and to the people *equally*, and having been substituted in the place of 'restriction, and *preventive of extortion*' it is proper to guard against *deception*, by *fixing* the sense of it; if it only means

pointing out, it is harmless; but why then the substitution? If it means *order*, or *command*, it is fallacious: for the *people* are not *ordered* or *commanded*. I wish he had carried his appeal to the *feelings* of the people. If oppressed, they must feel the oppression—if they are not, let them not be persuaded by this political quack, to think that they are. Prudent men who possess the blessings of vigorous health, will hardly be persuaded to swallow the pill, or draught of an ignorant mountebank, who has the impudence to pronounce that they are distempered, and ought to take his drugs. It is true that the lower house called the settlement of fees by proclamation '*the usurpation of a right*' and threatened an opposition, and their resolves were afterwards extremely violent; but if the settlement of fees was lawful, and expedient, it was not to be controuled by resolves, and a submission to such intemperate vehemence would have derogated from the dignity of government, and endangered the constitutional balance of power. The other branches of the legislature were as unanimous, and clear in an opposite opinion. Other reasons, besides what the Citizen has suggested may be assigned for the temporary duration of the inspection law. As a regulation it might, from an alteration of circumstances, become in every respect inconvenient, and the utility of a law, so extensive, and important, ought to be established by infallible experience, before its perpetuity is ordained. That a similar proclamation, in 1733, was the occasion of much clamour I believe, but not that the clamour was so general, and violent, as it has *since* been, *on another topic:* resolves have been as vehement, and more expressive of apprehension, *on another occasion*, when only *three* members ventured to vote against them; the number that divided against the last resolve, respecting the proclamation. The Citizen need not go far to have this matter explained, and, I imagine, he may be inclined to think resolves ought not *always* to fix men's opinions, since *sometimes*, they may be dictated by *passion*. His objection, that settling the fees is a prejudging of the question, has been answered, and besides an appeal to the supreme court of the province will

hardly admit of supposition; for the sum must exceed £50 sterling, or 10,000 lb. tobacco, and it is not to be expected, that an officer would suffer any one to be indebted to him, in so large a sum. The Citizen seems desirous to be informed, how fees are to be recovered—all in good time—if in chancery, the Governor, acting upon his own judgment, in this sage gentleman's opinion, will deserve to be removed ab offico, and he will most cordially wish his removal—weighty opinion—tremendous wish! if a patriot stepping forth, *like Hampden*, in the glorious cause of liberty should be *iniquitously* compelled to pay an officer's fees, for. services, *actually* performed, how alarming would be the event? The Citizen has thought proper to make me say that 'Mr. Ogle met with the most violent opposition any Governor ever did, *on account* of his proclamation' but I must object to this substitution, because the fact asserted by him is absolutely false. The opposition he met with, and the railings, he despised, flowed from a very different source, and, I suspect, the Citizen only affects an ignorance of the *particular circumstances*. The proclamation was not issued by Mr. Ogle, but 'he' fully atoned, 'says the Citizen,' by his '*subsequent* conduct, which was mild and equitable, for the oppressions (or errors) of his *former* administration;' here again I must object, because the Citizen falsely insinuates, that the decree I mentioned was in his *first*, when in fact, it was in his *last* administration. The opinions of eminent counsel in England, in favour of the proclamation, having been intimated, a passage in a pamphlet was cited by him to this effect, 'on a question of public concernment, the opinions of court lawyers, however respectable for their candour ought not to weigh more than the reasons adduced in support of them, &c.—for they have generally declared that to be legal, which the *minister for the time being* has deemed to be expedient' and hence he seemed to infer that the opinions in favour of the proclamation should be regarded with suspicion. I answered in my former letter, that the cases were entirely different, because 'proclamation was no point which the min-

ister aimed to establish &c.' and what have you replied to this, Mr. Citizen? 'You deny the assertion *if* the opinions are in favour of the proclamation, because it is a point, which the *minister of Maryland* aims to establish' the minister 'of Maryland' pitiful sneaking prevarication—*a'r'n't you ashamed of yourself?*

"The Citizen wishes 'that the opinions of the English lawyers in the opposition; would face the day'—for two reasons his request will not be complied with—the first, that he has no kind of right to make it—second, I have no power to grant it, but that I may not seem to be a mere churl, I inform him—that besides the attorney, and solicitor general of England, Serjeant Wynn and Mr. Dunning were of opinion, that the King could *lawfully* settle the fees of *constitutional* officers in the royal governments, and that this power was conferred on the Proprietor of Maryland by the charter, under which we derive the power of making laws for our good government. In New York, the fees of officers have been settled by the governor, and council, in virtue of the royal commission, and the people there (not much inclined to submit to violations of their rights) submit to the settlement. By this royal commission the Governor, with the advice, and assistance of the council, was authorized to make a table of fees, and thereby a reasonable provision for officers, and in virtue of this commission, such table of fees was made, and is the fixed rule, or standard, though an act of assembly in New-York for the settlement of fees had passed a little time before, and received the royal dissent—all this Mr. Citizen, has been 'endured' in New York, for want of the exertion of men of *your* principles civil, and religious.

"The short extract from Petit affords a just specimen of the Citizen's candour—the Citizen did not choose to state the nature of the proclamations mentioned in Petit, but has left the reader to infer a *great deal* from his *little scraps*. To obviate this disingenuous purpose, it is necessary to observe, that the proclamations complained of 'as altering some points of law, and making new' directed, who should not, and who might be

chosen to *represent the people*, and ordered 'if returns should be made contrary to this direction, they should be rejected, and warranted any person to seize starch, and to dispose, or destroy any stuff, etc., and restrained all men, not licensed (by the crown) to make starch'—the proclamation made for matter directly rejected the precedent session' ordered, that 'houses should be built with brick'—the proclamations 'touching the freehold livelihood of men' directed 'the razing and pulling down houses, and prohibited them to be rebuilt, and appointed the owner's land to be let by other men at what price they pleased'—former proclamations vouched 'ordering country gentlemen out of London, and against buildings'—'confiscations of goods, fine, forfeitures, imprisonment, seizure, standing in the pillory threatened'—now the reader may make his application, without danger of being deceived, and he may not improperly, judge too of the Citizen's *real patriotism*. (D) The Citizen it must be allowed, has a happy talent at *explanation*—I asked in my former letter, what was meant 'by dragging to light'—'made to feel the resentments of a free people—punished with infamy, exile or death—dread of such a fate'—and his ingenuity has proved, nothing more was meant, than a removal from office, and a different supposition proceeded from the 'conscious guilt of' a wicked minister 'trembling, and dismayed'—despicable fribble, and yet you complain of ridicule—'Sarcasms, says he, on personal defects have *ever been* esteemed the sure token of a base degenerate mind'—but I insist upon this exception. 'Where there is an apparent correspondence between the form, and the disposition, cum forma, et mores consimiles sunt,' when the features and lineaments of the one, are directed by the motions, and affections of the other, when

(D) Proclamations are lawful, or not, according to their subjects. That they have been employed as instruments of tyranny is not to be denied; but they have, too, been expedient to invigorate legal sanctions. Instances may be cited of proclamations, particularly such as have affected the order, and profession of certain religionists, that have been received with great popular applause. Eos tamen laedere non exoptemus, qui nos laedere non exoptant.

the countenance does the office of a dial plate, the wheels, and springs within the machine actuating its muscles.

> "The figure such, as may the soul proclaim—
> We pity faults by nature's hand imprest
> But with his mind, Thersites' form's a jest."

"When an adversary exerts all his *mischievous* powers, and the person assailed attempts to ridicule them 'he gives' according to the Citizen's maxim 'a sure token of a base, degenerate mind' but the extreme *mendacity*, and malice of the assailant are *just* proofs of his publick spirit—I am as little apprehensive of any attack upon my person or house, by a party of free men led on by the Citizen, as I am that the Ægyptian superstition, cultus Ægyptius cercopitheci (the worship of a monkey) will succeed the demolition of our religious establishment.

"Dialogue, as he has managed it, is a manner of writing very suitable to the tenuity of the Citizen's genius, he takes care that his opponent shall always be discomfited, and himself complimented on his victory. In the short one introduced into his last piece he has very cleverly, disclosed, or concealed just so much as answers his main purpose of misrepresentation: but the officer, *in fact*, has it in his power, in various instances, to receive his fees *immediately*. If a writ be applied for, or a copy of any record, or paper in his custody—if a warrant of survey, or patent—if letters testamentary, or of administration, if an account is to be passed, an inventory to be received, a commission to be issued, if the examination and passing a certificate, if a survey is to be made, certificates of it to be made out &c. &c. the respective officers have it in their power to receive their fees immediately for their services, and, if not restrained, might oppress, so that the Citizen's expedient, 'not pay,' is the 'baseless fabrick of a vision' the officers, who are thus paid, save the expence of collection, suffer no loss from insolvencies, and are not put to inconvenience from the irregular, or negligent conduct of sheriffs.

"There is a *little mischievous* insinuation of the Citizen, which deserves some animadversion: speaking of the affair of ship-money, he says, 'that the judges,' the guardians of law, and liberty ('*reflect on this, good reader*') gave a corrupt opinion —the words, 'reflect on this good reader'—seem to have been thrown out to raise a suspicion of *other judges*. That judges have been corrupt, that juries *too* have been corrupt, that Kings have been tyrants, that men have professed the utmost purity of intention, and after they had gained, by the arts of simulation, the popular confidence, basely sacrificed the rights of the people, and that personal enmity has assumed the fair appearance of publick virtue cannot be denied: but are all judges, all juries to be suspected of corruption, all kings of tyranny, all patriots of venality? and is *every* man, professing a regard for the publick welfare to be suspected of a narrow, personal, rancorous enmity, because the Citizen's furious temerity has laid aside the mask, and betrayed all the turpitude, and deformity of the basest, and the blackest malignity!

"Notwithstanding *your averment*, Mr. Citizen, the strong probability, on which I founded my opinion, who were concerned in the unprovoked virulent attacks, contained in the papers, still remain in full force.

"The many instances, in which you have shewn your utter disregard of truth in your assertions and of the most disingenuous prevarication is your answers, and explications, render *your* testimony extremely suspicious; and such is your casuistical ingenuity that *all possibility* of mean cavil and illiberal subterfuge must be absolutely precluded, before any credit will be due to *your averments*. 'Advice,' suggestion, 'assistance' are not terms of sufficient comprehension—if however, when attacked in the dark, I have mistaken the assailant, and directed some resentment against a person *really not privy to* nor *approving* the outrage, it is a strong reason to dissuade from these dark attacks, which may involve men, *in no manner* concerned.

"After all, who is this man, that calls himself a Citizen, makes his addresses to the inhabitants of Maryland, has

charged the members of one of the legislative branches with insolence, because, in their intercourse with another branch of the legislature, they proposed stated salaries, and has *himself* proposed a *different* provision for officers; contradicted the most publick, and explicit declarations of the governor, represented *all* the council, but *one*, to be mere fools, that he may represent *him* to be a political parricide; denounced infamy, exile, and death; expressed a regard for the established church of England? Who is he? He has no share in the legislature as a member of any branch; he is incapable of being a member; he is disabled from giving a vote in the choice of representatives; by the laws and constitution of the country, *on account of his principles*, which are *distrusted* by those laws. He is disabled by an express resolve from interfering in the election of members, on the *same account*. He is not a protestant.

"In my former letter I intimated, Mr. Citizen, that the Governor's conduct in the proceedings relative to the proclamation had been honored by the royal approbation, and yet you have *vehemently* pronounced, that the proclamation '*must not be endured.*' Softly; magnanimous Citizen, softly—you have already stretched the *skin* too much, and raise not your voice to so great a pitch of *dissonance*, as, peradventure, may be *intolerable*. 'Must not be endured!' These are naughty words. What then are you to do? Are you to have no employment, no amusement? Yes, be employed, be amused; but before you resolve upon a plan, consider seriously, what you are able, and what you are not able to bear,

——————quid ferre recusent,
Quid valeant HUMERI——————

and, if you are not very perverse, you will follow my advice, (though I have shewn what, stripped of disguise you are—'stultus in vidiae furore abreptus,' a foolish fellow, hurried away by the rage of malice) instead of making yourself ridiculous, perhaps, obnoxious, by endeavouring to gain the confidence of the people, who are *instructed* by the spirit of our

laws, and constitution, by the disabilities you are laid under, not to place any trust in *you*, when their civil, or religious rights, may be concerned. My advice to you is to be quiet, and peaceable, and with all due application, Ædificare casas, plostello adjungere mures, Ludere par impar, equitare in arundine longa, to build baby houses, yoke mice to a go-cart, play at even or odd, (or push pin for variety) and ride upon a long cane."

ANTILON.

CHAPTER 10.

THIRD LETTER OF FIRST CITIZEN.

1773. The answer to Antilon's third letter was made by Mr. Carroll on the 6th of May. It read:

"*Our* places *are disposed of to men, that are the* ornaments *of their own dignity; to men that have the welfare of the* Kingdom *wholly at heart, and who accept of* offices *only to do the necessary* drudgery *of the state, and neither to* amass estates *from their services, nor* aggrandize *any* branches *of their family: hence it happens that England can never be infamous for a* Sejanus, *who rose from the dunghill to grasp all power, and whose* working *wickedness had generally a* double plot, *upon his* prince, *and upon the* people." —TRUE BRITON, No. 38.

With this quotation "First Citizen," began his third letter, which continued:

"The prince who places an unlimited confidence in a bad minister, runs great hazard of having that confidence abused, his government made odious, and his people wretched: of the many instances, which might be brought to confirm the observation, none more instructive, can perhaps be selected from the annals of mankind, than the story of Sejanus. We need not however have recourse to the history of other nations, and of other ages, to prove, that the unbounded influence of a wicked minister, is sure to lead his master into many difficulties, and to involve the people in much distress; the present situation of this province is a proof of both.

"It is not my intention to compare Antilon with Sejanus; yet whoever has the curiosity to read the character of the latter drawn by the masterly pen of Tacitus, and is well acquainted with the former, will discover some striking likenesses between

the two.—*The 'animus sui obtegens, in *alios criminator*'—The 'juxta adulatio & superbia' are equally applicable to both.

"Does it yet remain a secret, who this wicked minister, this Antilon, is? Are ye, my countrymen, '*puzzled to find him out?*' Surely not; his practices have occasioned too much mischief, to suffer him to lurk concealed, notwithstanding all his mean, and dirty arts, to gain popularity, by which he rose to his present greatness, and the indefatigable industry of his *tools*, in echoing his praises, and celebrating the *rectitude* of his measures.

"In vindication of his conduct, Antilon has not endeavoured to convince the minds of his readers by the force of reason, but '*in the favourite method of illiberal calumny, virulent abuse, and shameless asseveration to affect their passions*'—has attempted to render his antagonist ridiculous, contemptible, and odious; he has descended to the lowest jests on the person of the Citizen, has expressed the utmost contempt of his understanding, and a strong suspicion of his *political, and religious principles.* What connexion, Antilon, have the latter with the Proclamation? Attempts to rouse popular prejudices, and to turn the laugh against an adversary, discover the weakness of a cause, or the inabilities of the advocate, who employs ridicule, instead of argument—'*The Citizen's patriotism is entirely feigned;*' his reasons must not be considered, or listened to, because his *religious principles* are not to be trusted —Yet if we are to credit Antilon, the Citizen is so little attached to those principles, 'That he is *most devoutly wishing for the event*,' which is to free him from their shackles. What my speculative notions of religion may be, this is neither the place, nor time to declare; my political principles ought only to be questioned on the present occasion; surely they are constitutional, and have met, I hope, with the approbation of

*"A mind dark and unsearchable, prone to blacken others, alike fawning and imperious." If the Latin word *adulatio*, implies that Sejanus was fond of flattery, and inclined to flatter, the sentiment is still more apposite to our wicked minister, who is known to swallow greedily the fulsome and nauseous praises of his admirers, and to bear a great deal of daubing.

my countrymen; if so, Antilon's aspersions will give me no uneasiness. He asks—Who is this Citizen?—A man, Antilon, of an independent fortune, one deeply interested in the prosperity of his country: a friend to liberty, a settled enemy to lawless prerogative. I am accused of folly, and falsehood, of garbling moral, and legal maxims, of a narrow, sordid and personal enmity; of the first, and second accusations, I leave the publick judge, observing only, that my want of veracity has not been proved in a single instance. What moral, what legal maxims have I garbled? Point them out Antilon: you assert that my censures of your conduct flow from a narrow, sordid, and personal enmity; that I dislike your vices, is most true; that my enmity is rancorous, and sordid, I deny; you have made the charge, it is incumbent on you to prove it; should you fail in your proofs, admit you must, on your own principles, that you have exhibited the strongest tokens of a base mind: but what is evident to all, can receive no additional confirmation from your admission. Take this as an answer, the only one I shall give, to all your obloquy and abuse.—That vituperari ab improbo summa est laus. The bad man's censures are the highest commendations.

"If it be irksome to be engaged against a writer of a 'weak head,' and *corrupt heart*, the task becomes infinitely more disgusting when we have to encounter not only the latter vice, but likewise the wilful misrepresentations of craft, and falsehoods dictated by '*shameless impudence.*' It will be shewn in the course of this paper that Antilon is guilty of both charges.

"The assessment of ship-money, the Citizen has said, was a more open, the Proclamation a more disguised, though not less dangerous attack on liberty; it has, I hope, been proved already, that fees are taxes, and that the settlement of them by Proclamation is arbitrary, and illegal: Antilon has not refuted the arguments adduced to prove both propositions; other reasons in support thereof shall be brought hereafter; at present let us consider whether the Proclamation be not a *disguised, and dangerous attack on liberty.* If we attend to the time, circumstance, and *real* motive of issuing the proclama-

tion, they will, I think, evince, beyond all doubt, the truth of the assertion. The proclamation came out a few days after the prorogation of the assembly, under the colour of preventing extortion, but in reality to ascertain what fees should be taken from the people by the officers, and after a disagreement between the two houses about a regulation of fees by law. It would have been too insolent, to have informed the people in plain terms; your representatives would not come into our proposals, the governor was therefore advised to issue the proclamation for the settlement of fees, adopting the very rates of the late regulation objected to by your delegates, as unjust, and oppressive in several instances; their obstinate, and unreasonable refusal to comply with our *moderate* demands, constrained us to recur to that expedient. It would I say have been too daring, to have talked openly in this manner, and too silly, to have avowed, that, to cover the dangerous tendency of the proclamation, it was cloaked with the specious, and pretended necessity of protecting the people from the rapacity of officers. This affected tenderness for the people, considering the character of the minister, who made a parade of it, and has since assigned it as the best excuse of an unconstitutional measure, was sufficient to awake suspicion, and fears. Our constitution is founded on jealousy, and suspicion; its true spirit, and full vigour cannot be preserved without the most watchful care, and strictest vigilance of the representatives over the conduct of administration. This doctrine is not mine, it has been advanced, and demonstrated by the best constitutional writers; the present measures call for our closest attention to it; the latent designs of our crafty minister will be best detected by comparing them with the open, and avowed declarations of government in 1739, on a contest exactly similar to the present. The pursuits of government in the enlargements of its powers, and its encroachments on liberty, are steady, patient, uniform, and gradual; if checked by a well concerted opposition at one time, and laid aside, they will be again renewed by some succeeding minister, at a more favourable juncture."

Extract from the votes and proceedings of the assembly 1739.

"The conferrees of the upper house are commanded to acquaint the conferrees of the lower house, that they conceive the proprietary's authority to settle fees, *where there is no positive* law for that purpose, to be indisputable, and that they apprehend the exercise of such an authority to be agreeable to the *several instructions* from the throne to the respective governments, and therefore that the upper house cannot but think a *perpetual law* in this case, reasonable and necessary, &c."

"Compare, my countrymen, the proclamation issued in 1739 with the present; compare the language of the conferrees of the upper house in 1739, with Antilon's arguments, and vindication of his favourite scheme; in substance they are the same. Antilon's account of ship-money, I have admitted in the main to be true, though not intirely impartial; this sentence conveys no insinuation, but what is plain, and easily justified. A writer may give a relation of facts generally true, yet by suppressing some circumstances, may either exaggerate, or diminish the guilt of them, and by so doing greatly alter their character and complexion. The justice of the remark will hardly be denied, and the application of it to the present case will evince its utility. Antilon has vented part of his spleen on Mr. Hume; the censured passage is taken from that author, acknowledged by a sensible writer, (B) and thorough whig, to be an instructing, and entertaining historian. To exculpate the *notorious apologist* and myself, it is necessary to observe that the words '*levied* with *justice, and equality*' (not *equity* as cited by Antilon) mean, the tax was equally divided among, or assessed upon the subjects without favour and affection to particular persons; that the imposition, though applied to a good and publick use, was contrary to law, the historian has acknowledged in the most forcible, and express words.

"Has the Citizen anywhere insinuated, that the assessment of ship-money was legal? Has he not expressly declared,

(B) Daines Barrington—Observations on the statutes chiefly the more ancient.

that he does not mean to excuse that assessment? That the conduct of Charles will admit of no *good* apology? Yet that there were some appearances in his favour, the passages already quoted, candid men, I think, will admit, if not as a proof to convince, at least as an inducement to incline them to that opinion; mine, I confess, it is, and I make the acknowledgment, without fear of incurring the odious imputation of abetting arbitrary measures, or of being a friend to the Stuarts.

"What means the insinuation, Antilon, conveyed in this sentence '*The appellation "tyrant" has I suspect rubbed the sore.*' Your endeavours to defame, excite only pity, and contempt; your heaviest accusations, thank God, have no better foundation than your own suspicions. But to return, I again assert, that notwithstanding all the acts ascertaining the subjects' rights, cited in your last admirable, and polite performance, that the boundaries between liberty and prerogative were far from being ascertained in Charles's reign, with that precision, and accuracy, which the subsequent revolutions, and the improvements our constitution in later times have introduced. (C) I must trouble my readers with a few more quotations from the obnoxious historian above mentioned, submitting the justice of his observations, and the inference drawn from them to their decision, and better judgment.

"'Those lofty ideas of monarchical power *which were commonly adopted during that age and to which the ambiguous nature of the English constitution gave so plausible an appearance*, were firmly riveted in Charles.' Again, speaking of illegal imprisonment, 'But the Kings of England (says he) who had not been able to prevent the enacting these laws, (in favour of personal liberty) had sufficient authority, when the tide of liberty was spent, to hinder their regular execution, and they deemed

(C) "The latter years, says Blackstone, of Henry VIII. were the times of the greatest despotism, that have been known in this island, since the death of William the Norman: the prerogative, as it then stood by common law (and much more when extended by act of parliament) being too large to be endured in a land of liberty."

it superfluous to attempt the formal repeal of statutes, which they found so many expedients, and pretences to elude.'

"'The imposition of ship-money (the same historian remarks) is apparently one of the most dangerous invasions of national privileges, not only which Charles was ever guilty of, but which the most arbitrary princes in England, since any liberty had been ascertained to the people, had ever ventured upon.' He subjoins in a note, 'It must however be allowed, that Queen Elizabeth ordered the seaports to fit out ships, at their own expence, during the time of the Spanish invasion.' Elizabeth treated her parliaments with haughtiness, and assumed a tone of authority in addressing those assemblies, which even the tyrant Charles did not exceed:—her father governed with despotic sway. To these opinions, and unsettled notions of the kingly power, and to the prejudices of the age, candour perhaps will partly ascribe the determination of the judges in favour of ship-money, and not solely to corruption.

"The Citizen has said, '*that the revolution rather brought about, than followed King James's abdication of the crown.*' The assertion is warranted by the fact. James's endeavours to subvert the establishment of church and state, and to introduce arbitrary power, occasioned the general insurrection of the nation in vindication of its liberties, and the invasion of the Prince of Orange, soon afterwards crowned King of England. James, disspirited by the just, and general desertion of his subjects, and fearing, or pretending to fear violence from his son in law, withdrew from the kingdom; his withdrawing was what properly constituted his abdication of the crown; his tyrannical proceedings were the cause indeed of that abdication, and voted together with *his withdrawing*, an abdication of the government; till that event the revolution was incompleat. Will any man, except Antilon, or one equally prejudiced, infer from the last mentioned quotation, that the Citizen intended to cast any reflection on the revolution, to represent it as an *unjust* act of violence, or that he does not approve the political principles of those, by whom it was principally accomplished?—I shall now consider Antilon's

main argument in support of the proclamation, first reducing it into a syllogism.

"'Taxes cannot be laid but by the legislative authority; but fees have been laid by the separate branches thereof; therefore fees are not taxes.'

"I deny the major, Mr. Antilon, in the latitude laid down by you, but admit it with this restriction, saving, in such cases as are warranted by long, immemorial, and uninterrupted usage. The very instances adduced in your paper are an exception to the general rule. The two houses of parliament have separately settled fees, as I said before, by the usage, custom, and law of parliament, which is part of the law of the land.

"'*The judges in Westminster-hall have settled fees*,' you say, without defining what you mean by a settlement of fees in this instance: your inference, '*therefore a similar power is vested in the governor of this province*,' I deny. The inference will not be granted, unless you prove, that the King by his sole authority, contrary to the express declaration of the commons, has settled the fees of officers belonging to the courts of law, and equity, in Westminster-hall, that is, hath laid new fees on the subject, at a time when they were no longer paid out of the royal revenue, but taken out of the pockets of the people. The fees of officers have been established for many years past in this province by the legislature, and the act establishing them was made temporary, that on a change of circumstances an alteration of the fees, if expedient, should take place; that this was the *sole* motive of making the inspection law temporary, the Citizen has not asserted, nor has Antilon denied it to be *one* of the motives. An inspection of the votes and proceedings of assembly in 1739 will evince, that the principal reason of giving a temporary existence to that act was to alter, and correct the table of fees on the expiration of it.

"'31 May 1739.—The conferrees of the upper house acquaint the conferrees of the lower house, that the upper

house could agree to no law to establish officers' fees, but what should be *perpetual*, and were ordered not to proceed to consider of any fees, till the sense of the lower house on that point should be known.'

"'2 June 1739.—This house (the lower) having taken into consideration the report of their members appointed conferrees concerning the officers' fee-bill, and the proposal made by the conferrees of the upper house, of making that bill *a perpetual act*, do unanimously agree, that it would be of the *most dangerous and destructive consequence to the people of this province to make such act perpetual.*'

"Judge now reader what was the principal intention of the delegates in making the inspection law temporary; but if fees may be lawfully settled by proclamation, '*when there happens to be no prior provision, or establishment of them by law*,' then may the fees originally settled by a temporary act, be upheld by prerogative, and made perpetual, and the province be left exposed to the same dangerous, and destructive consequences, which were apprehended from a perpetuity of the law.

"*Antilon asserts*, 'That the Citizen has been constrained to admit, that the judges in England have settled fees:' This assertion I must take the liberty of contradicting; if the reader will be at the trouble of turning to the Citizen's last paper, he will there see, that the Citizen, after quoting Antilon's words, '*The courts of law and equity in Westminster-hall have likewise settled fees*,' asks, by what authority? 'Antilon, says he, has not been full, and express on this point'—'Admitting even, (continues the Citizen) that the chancellor, and judges have settled fees, by virtue of the King's commission, at the request of the house of commons, without the sanction of a statute, yet the precedent by no means applies to the present case.'—Is this being constrained to admit that the judges in England have settled fees? Once for all, Antilon, I must inform you, that I shall never admit your assertions, barely on the strength of your *ipse dixits*, unsupported by other proof; I

perceive your drift, but I know my man, and will not suffer myself to be intangled in his snares.

"*Vane* ligur, frustraque animis elate *superbis*,
Nequiequam patrias tentasti *lubricus* artes."

————"Proud Antilon,
On others practice thy deceiving arts;
Thin stratagems, and tricks of little hearts
Are lost on me."————

"'*The judges in Westminster-hall have settled fees.*' A full enquiry into this matter, I am inclined to believe, would expose Antilon's disingenuity, and shew how inconclusive his inference is—'*Therefore the Governor may settle fees*,' that is, *impose fees* on the inhabitants of this province. It has been already observed, that the King originally paid all his officers, and that nothing can be more consistent with the spirit of our constitution, than that he, who pays salaries, should fix them. 'Fees are certain perquisites allowed to officers, who have to do with the administration of justice, as a recompence for their labour, and trouble, and these are either ascertained by acts of parliament or established by *ancient usage*, which gives them *an equal sanction with an act of parliament.*'(D) Coke in his comment on Littleton, sect. 701, observes, that it is provided by the statute of Westminster 1st, that no sheriff, or any other minister of the King, shall take any reward for doing his office, but that which the King alloweth. That the subsequent statutes having permitted fees to be taken in some instances, under colour thereof, abuses had been committed by officers: but that they cannot take fees, but such as are given by act of Parliament. 'But yet such reasonable fees as have been allowed by the courts of justice of *ancient time* to inferior ministers, and attendants of courts for their *labour* and *attendance*, if they be asked and taken of the subject, is no extortion.' It does not appear to me, that the judges have ever imposed *new fees* by their sole authority. Hawkins says, 'the chief

(D) Bacon's Abridg. 2d Vol.

danger of oppression is from officers (E) being left at liberty to set their *own* rates, and make their *own* demands,' therefore the *law* has authorized the judges to settle them.

"What law, common, or statute, has either empowered the judges to impose *new* fees? Antilon asks, how are *these settlements*, and the admission of *their legality* (take notice, reader, I have not admitted *their legality*) to be reconciled with the position, *that fees are taxes?* Before you can reasonably expect an answer to this question, it is incumbent on you, Antilon, first to fix a certain, and determinate meaning to a *settlement of fees by the judges*, and to explain in what manner, upon what occasions, and at what time, or times, the judges have *settled* fees; then shall we have some fixed, and certain notion of those settlements. After you have taken all this trouble, the information may be pleasing (man is naturally curious and fond of having mysteries unfolded) but the inference, '*Therefore, the governor may legally impose fees by his sole authority*,' will be rejected for this plain and obvious reason. Fees in this province have been generally settled by the legislature; so far back as 1638, we find a law for the limitation of officers' fees; in 1692, the governor's authority to settle fees was expressly denied by the lower house; it was voted unanimously by that house, '*That it is the undoubted right of the freemen of this province not to have* ANY FEES *imposed upon them but by the consent of the freemen in a general assembly.*'—The speaker of that house attended by several members went up to the council chamber, and informed the governor, and members thereof, 'That no *officers' fees* ought to be imposed upon them, but by the consent of the representatives in assembly, and that this liberty was established and ascertained by several acts of parliament, the authority of which is so great, as to receive no answer, but by

(E) Antilon has acknowledged, that two counsellors were interested in the settlement of fees: he is, perhaps, one of them: he has also acknowledged, that he advised the proclamation as expedient and legal: he has held up the proclamation as the standard, by which the courts of justice are to be guided in awarding costs: if all this be true, has he not endeavoured to set his own rates? and make his own demands?

repeal of the said statutes, and produced the same with several other authorities; to which the governor's answer was, that his instructions from his majesty were to *lessen*, and *moderate* the exorbitancy of them, and not to *settle* them; to which Mr. Speaker replied that they were thankful to his majesty for the same, but withal desired that *no fees* might be *lessened* or *advanced* but by the consent of the assembly, to which the governor agreed.' An act was passed that very session for regulating officers' fees.

"Here was a formal relinquishment of the claim to settle fees by prerogative; from that day to this, the claim has been constantly opposed by the representatives of the people, and in consequence of that opposition, laws have been made from time to time for the limitation of officers' fees; these laws ought to be considered, as so many strong, and express denials of the proprietary's authority to settle fees, and as so many acknowledgments on the part of government of its illegality. Precedents, I know, have been brought to shew, that the power hath been exercised; so have many other unconstitutional powers; the exercise doth not prove the right, it proves nothing more, than a deviation from the principles of the constitution in those instances, in which the power hath been illegally exercised. Precedents drawn from the mere exercise of a disputed authority, so far from justifying the repeated exercise of that authority, suggest the strongest motive for resisting a similar attempt, since the former temporary, and constrained acquiescence of the people under the exertion of a contested prerogative is now urged as a proof of its legality. As precedents have been mentioned, their proper use, and misapplication, cannot be better displayed, than by a quotation from the author of the considerations. After perusing the passage with attention, the reader, I think, will be disposed to treat Antilon's argument drawn from the precedent of New York, with great contempt, perhaps, with some indignation, should he have reason to believe, that the considerations were wrote by this very Antilon. 'When instances are urged as an authoritative reason for adopting a new' (or an illegal measure,

the reason is applicable to either) 'they are proved to be more important from this use of them' (the countenance and support they are made to give to arbitrary proceedings) 'and ought therefore to be reviewed with accuracy, and canvassed with strictness; what is proposed, ought to be incorporated with what has been done, and the result of both stated, and considered as a substantive original question, and if the measure proposed is incompatible with the constitutional rights of the subject, it is so far from being a rational argument, that consistency requires an adoption of the proposed measure, that on the contrary, it suggests the strongest motive for abolishing the precedent; when therefore an instance of *deviation* from the constitution is pressed, as a reason for the establishment of a measure striking at the root of all liberty; though the argument in inconclusive, it ought to be useful. Wherefore, if a sufficient answer were not given to the argument drawn from precedents, by shewing that none of the instances adduced are applicable, I should have very little difficulty in denying the justice of the principles, on which it is founded: *what hath been done if wrongful confers no right to repeat it;* to justify oppression and outrages by instances of their commission, is a kind of argument, which never can produce conviction, though it may *their* acquiescence, whom the terror of greater evils may restrain; and thus the despotism of the east may be supported, and the natural rights of mankind trampled under feet. The question of right therefore doth not depend upon precedents, but on the principles of the constitution, and hath been put on its proper point already discussed,' whether the prerogative may lawfully settle fees in this province. Antilon has laid great stress on the authority of the English judges to settle fees, and from that authority, has inferred a similar power in the governor of this province; he has not indeed explained, as it behoved him to do, the origin, nature, and extent of that authority, nor has he shewn, in what manner it has been exercised.

"No man, I believe, hath a precise, and clear idea of a settlement of fees by the judges, from what Antilon has

hitherto said on that subject. What does it mean? I ask again, does the authority to settle, imply a power to lay *new* fees? The judges it is allowed cannot alter, or increase the *old* fees; they have not therefore, I presume, a discretionary power to impose *new;* if their authority should extend to the imposition of *new fees*, why in a variety of instances, have fees been ascertained by act of parliament? Where was the necessity of enacting those statutes, if the judges were empowered *by law* to settle, that is, to impose fees by their own, or delegated authority? Here seem to be two distinct powers in the same state, capable of the same thing; if co-equal, they may clash, and interfere with each other; if the one be subordinate to the other, then no doubt, the power of the judges must be subject to the power of the parliament, which is, and must be supreme; if subject to, it is controulable by parliament. The parliament, we all know, is composed of three distinct branches, independent of, yet controuling, and controuled by each other; no law can be enacted, but by the joint consent of those three branches; now, if in case of disagreement between them about a regulation of fees, the power of the judges may step in, and supply the want of a law, then may the interposition, and authority of parliament in that case be rendered useless, and nugatory. Suppose the leading members of one branch to be deeply interested in the regulation, that branch will probably endeavour to obtain, if it can, an *exorbitant provision* for officers; the other may think the provision contended for, too great, they disagree; the fee-bill miscarries; the power of the judges is now left at liberty to act, a necessity for its acting is insisted on, and they perhaps establish the *very fees*, which one branch of the legislature has already condemned as unreasonable and excessive. Suppose the judges should hold their seats during pleasure, suppose them strongly prejudiced in favour of government, might not a bad administration, if this power were submitted to, obtain what establishment it pleased for its officers? Should the judges discover a disinclination to favour the views of government, the removal of the stubborn, and the

putting in of others more compliant, would overcome that difficulty, and not only secure to government for a time, the desired establishment of fees, but render that establishment perpetual. That a bold, and profligate minister will embrace the most barefaced, and shameful means to carry a point, the creation of twelve peers in one day, '*on the spur of the occasion*,' is a memorable proof. A settlement of fees by proclamation, I still presume to assert, notwithstanding the subtile efforts of Antilon to prove the contrary, to be an arbitrary, and illegal tax, and consequently thus far similar to the ship-money assessment: my Lord Coke's authority warrants the assertion and his reasoning will support the principle; all new offices erected with new fees, or *old* offices with *new* fees, are within this act (de tallagio non concedendo) that is, they are a *talliage* or *tax* upon the people.

"I never asserted, that our offices relating to the administration of justice were not *old* and *constitutional:* but I have asserted, that we have *no old*, and *established fees:* that fees settled by proclamation, are *new* fees, and that consequently they come within the act, and Coke's exposition of it; and therefore, as *new* fees are taxes, and taxes cannot be laid but by the legislature, except in the cases heretofore mentioned; fees settled by one, or two branches thereof, are an unconstitutional and illegal tax. What Coke observes, says Antilon, in his comment on the statute (de tallagio non concedendo) 'may be fully admitted, without any proof, that *every settlement* of *fees* is a tax;' therefore, I presume, some settlement of fees is a tax, what settlement of them, Antilon, is a tax? If fees settled by act of parliament are taxes, why should they cease to be taxes, when settled by the discretionary power of the judges? if when settled by the latter authority, they come not within the strict legal definition of a tax, are they on that account less oppressive, or of a less dangerous tendency? According to Antilon, the words, '*new fees are not to be annexed to old offices*,' mean, '*that the old and established fees are not to be augmented or altered but by act of parliament;*' yet in '*the old offices, fees may be settled.*' That is, if I comprehend him

right, *new* fees may be established by the judges, '*for necessary services, when there happens to be no prior provision made by law for those services.*'

"How is this interpretation of my Lord Coke's comment to be reconciled with his position, that fees cannot be imposed but by act of parliament, and with the doctrine laid down in 2d Bacon already recited? The *legality* of the proclamation, Antilon has said, is determinable in the ordinary judicatories; does it follow therefore, that the measure is *constitutional?* On the same principle the assessment of ship-money would have been constitutional; for the legality of that too was determinable in the ordinary judicatories, and it was actually determined to be legal by all the judges, four excepted; if in that decision the parliament, and people had tamely acquiesced, proclamations at this day would have the force of laws, indeed would supersede all law.

"Antilon's next argument in support of the proclamation is derived from the necessity of ascertaining precisely by the judgment, or final decree, the costs of suit, which are sometimes wholly, sometimes partly composed of the lawyers, and officers' fees. If fees are taxes, and taxes can be laid by the legistature only, that *necessity* (admitting it for the sake of argument to exist) will not justify the settlement of fees by proclamation, who is to be judge of the necessity? Is the government? then is its power unlimited, who will pretend to say, that the *necessity is urgent*, and *invincible*? Such a necessity only, can excuse the violation of this fundamental law; '*The subjects shall not be taxed but by the consent of their representatives in parliament.*' 'If necessity is the sole foundation of the dangerous power' of settling fees by prerogative, when there is no prior establishment of them by law, 'it behoves those, who advise the exercise of that power, not only to see that the necessity is indeed *invincible*, but that it has not been occasioned by *any fault* of their own; for, if it is not the one, the act is in no way justifiable, and if the other, that very necessity, which is the excuse of the act, will be the accusation of those, who occasioned it, and in place of being justifiable in

their conduct, they must be chargeable, first, with the *blame of the necessity*, and next with the danger of the violation of the law, as the drunken man who commits murder, justly bears the guilt both of inebriation and bloodshed. (F) To whom is the blame of the supposed necessity, now plead as an excuse for acting against law, imputable? Is it not to those, who rather than submit to a regulation by law of their fees, and to an apprehended diminution of income, chose to shelter themselves under the wings of arbitrary prerogative, and to expose their country to all the difficulties, and distress, which the wanton exercise of an unconstitutional power was sure to introduce?

"Who, the least acquainted with the arguments in favour of ship-money, and the *dispensing power*, does not perceive this part of Antilon's defence to be a repetition, and revival of those exploded, and justly odious topics tricked off in a new dress to hide their deformity, the better to impose on the unthinking and unwary. Antilon asserts, that the Citizen from some proceedings of the house of commons, infers a power in the commons '*alone*,' to settle the fees of officers belonging to the courts of law. Want of accuracy in the expression has, I confess, given a colour to the charge; but Antilon to justify his construction of the sentence referred to, and to exclude all doubt of the Citizen's meaning, has inserted the word '*alone*.'

"'If the commons, says the Citizen, *had a right to enquire into the abuses committed by the officers of the courts, they had, no doubt, the power of correcting those abuses, and of establishing the fees in those courts, had they thought proper*'—he should have added (to prevent all cavil)—*with the concurrence of the king and lords.* This was really the Citizen's meaning, though not

(F) Quoted from a pamphlet intitled a "a speech against the suspending, and dispensing prerogative" supposed to be written by my Lord Mansfield. Mr. Blackstone speaking of the very measure, which occasioned that speech, observes, "A proclamation to lay an embargo in time of peace upon all vessels laden with wheat, (though in the time of a publick scarcity) being contrary to law—the advisers of such a proclamation, and all persons acting under it found it necessary to be idemnified by a special act of parliament, 7 Geo. 3d. C. 7."

expressed; his whole argument should be considered, and taken together; he endeavours all along to prove, that fees are taxes, that taxes cannot be laid but by the legislature, except in the instances already mentioned, which, as I said before, are exceptions to the general rule. The extracts from the report of the committee were adduced to shew, what abuses had crept into practice by officers charging illegal fees; what oppressions the encroaching spirit of office had brought upon the subject; and the controuling power of the house of commons over the officers of the courts of justice. They resolved, that all the fees should be fixed, and established by authority, that they should be registered in a book, and inspected gratis, that the rates being publickly known, officers might not extort more than the usual, ancient, legal, and established fees. It does not appear, that the commons authorized the judges to create *new* fees, or to alter, and increase the old, but insisted, that a table of all the fees should be made out under the inspection of the judges, and, to give it a greater sanction, should be signed and attested by them, to prevent, no doubt, the secret and rapacious practices of officers. That fees are taxes, I hope, has been proved; but should it be granted, that they are not taxes, because they have been settled in England by other authority, than the legislature (which I do not admit, if by a settlement of fees under the authority of the judges, an imposition of *new* fees be meant) still I contend, that a settlement of fees in this province by proclamation is illegal, and unconstitutional, for the reasons already assigned; to which the following may be added. If a table of fees had been framed by the house of commons, confirmed by act of parliament, and all former statutes relating to fees had been repealed, and a temporary duration given to the new act, that at its expiration, corrections and amendments (if expedient) might be made in the table of fees, if in consequence of a disagreement between the branches of the legislature about those amendments, the law had expired, and the commons had resolved, that an attempt to establish the late rates by proclamation would be illegal, and unconstitutional.

would any minister of Great Britian advise his sovereign, to issue his proclamation, under colour of preventing extortion, but in reality for the very purpose of establishing the contested rates? If a minister should be found daring enough to adopt the measure, a dismission from office might not be his only punishment, although he should endeavour to justify his conduct upon legal principles, in the following manner.

"The same authority distinct from the legislative, that has settled, may settle the fees, when the proper occasion of exercising it occurs: the proper occasion has now presented itself, we have no law for the establishment of fees; some standard is necessary, and therefore the authority distinct from the legislative, which used to settle fees, must interfere, and settle them again; necessity calls for its exertion, and it ought to be active; recourse, I allow, should not be had to its interposition, but in a case of the utmost urgency.

> "Nec deus intersit nisi dignus vindice nodus.
> Nor let a god in person stand display'd,
> Unless the *labouring plot* deserve his aid."

"Such reasoning would not screen the minister from the resentment of the commons: they would tell him, that the necessity, '*The tyrant's plea*,' was pretended, not real, if real, that it was occasioned by his selfish views, which prevented the passage of a law, for the settlement of fees; they would perhaps assert, that a power distinct from the legislative, unless authorized by the latter, had never attempted to impose fees, since they began to be paid by the people; they might possibly shew, that a settlement of fees by the judges, does not imply an authority in them to impose *new* fees; if it should, that the power is unconstitutional, and ought to be restrained; they might contend that a settlement of fees by the judges, was nothing more than a publication under their hands, and seals of such fees, as had been usually, and of ancient time received by the officers of the courts; that the publication by authority was made, to prevent the rapacious practices of officers; they would probably refer the minister to my Lord Coke, who says expressly—that, while officers 'could take no fees at all for

doing their office but of the King, then had they no colour to exact anything of the subject, who knew, that they ought to take nothing of them, but when some acts of parliament, changing the rule of the common law gave to the ministers of the King, fees in some particular cases to be taken of the subject, abuses crept in, and the officers and ministers did offend in most cases, but at this day, they can take no more for doing their office, than have been since this act allowed to them *by authority of parliament.*' (Westminster 1st.)

"But let us leave fiction, and come to reality; What will the delegates of the people at their next meeting say to *our* minister, this Antilon, this *enemy to his country*,(G) this bashaw—who calls a censure of his measures, arrogance, and freedom of speech, presumption?—They will probably tell him, *you* advised the proclamation, with *you* it was concerted in the cabinet, and by *you* brought into council; *your* artifices imposed on the board, and on the Governor, and drew them into an approbation of a *scheme, outwardly specious, and calculated* to deceive; *you have* since defended it upon principles incompatible with the freedom, ease, and prosperity of the province. If your endeavours should prove successful, if the proclamation should be enforced, we shall never have it in our power to correct the many glaring abuses, and excessive rates of the old table, adopted by the proclamation, nor to reduce the

(G) Voted so by the lower house. Antilon seems to make very light of those resolves, a wicked minister is never at a loss to find out motives, to which he may ascribe the censure and condemnation of his conduct, these he will impute either to passion, to the disappointment of a faction, or to rancorous and personal enmity; however, if the proclamation is illegal, and of a dangerous tendency, the votes alluded to, so far from being justly imputable to any of those causes, ought to be deemed the result, and duty of real patriotism. Antilon has compared the votes of a former lower house against certain religionists, to the late votes against the adviser of an unconstitutional measure. The unprejudiced will descern a wide difference between the two proceedings, but a review of the former would answer no good purpose, it might perhaps rekindle extinguished animosities; of that transaction, therefore, I shall say no more than—

"*Meminimus, et ignoscimus:*"
"We remember, and forgive."

salaries of officers, which greatly overpay their services, and give an influence to government, usually converted to sinister purposes, and of course repugnant to the general good.

"The monies collected from the people, and paid to officers, amount annually to a large sum; officers are dependent on, and of course attached to government; power is said to follow property, the more, therefore, the property of officers is encreased, the greater the influence of government will be; fatal experience proves it already too great. The power of settling fees by proclamation is utterly inconsistent with the spirit of a free constitution; if the proclamation has a legal binding force, then will it undoubtedly take away a part of the people's property without their consent. 'Whatever another may *rightfully* take from me without my consent, I have certainly no property in,' (H)—if you render property thus insecure, you destroy the very life, and soul of liberty.—What is this power, or prerogative of settling fees by proclamation, but the mere exertion of arbitrary will?—If the supreme magistrate may lawfully settle fees by his sole authority, at one time, why may he not increase them at some other, according to his good will, and pleasure? (I) what boundary, what barrier shall we fix to this discretionary power? Would not the exercise of it, if submitted to, preclude the delegates of the people from interfering in any future settlement of fees, from correcting subsisting abuses, and excesses, or from lowering the salaries of officers, when they become too lucrative?—It is imagined, the salaries of the commissary, and secretary, from the increase of business, will in process of time, exceed the appointments of the governor; does not this very circumstance point out the necessity of a reduction?—But if the authority to regulate officers' fees, with the concurrence of the other branches of the legislature, should be wrested from the lower house, What expectation can we ever have, of seeing this necessary reduction take place?

(H) Mollyneux case of Ireland stated.

(I) Fees were actually increased by proclamation in 1739 on the application of several sheriffs.

"'That questions ought not to be prejudged, says Antilon, is another of the Citizen's objections' here again he wilfully misrepresents the Citizen's meaning.

"The passage in the Citizen's last paper alluded to by Antilon is this:—'The governor it is said with the advice of his lordship's council of state, issued the proclamation: three of our provincial judges are of that council, they therefore advised a measure, as proper, and consequently as legal, the legality of which, if called in question, they were afterwards to determine; is not this in some degree prejudging the question?' Antilon talks of precedents, and established rules; the Citizen says not a word about them, his meaning is too plain to be mistaken, without design. The council, it has been said, advised the proclamation, the judges therefore, who were then in council, and concurred in the advice, thought it a legal measure; the legality of it may hereafter be questioned; as judges of the provincial court, they may be concerned in the determination of the question; Is there no impropriety in this proceeding? If they should determine the proclamation to be illegal, will they not condemn their former opinion? when they advised the proclamation, they no doubt, judged it to be, not only '*expedient*' but *legal:* possibly, the decision of this controversy may rest ultimately with the members of the council, who constitute the court of appeals; these gentlemen, it seems, unanimously concurred in advising the proclamation. '*Is not this to anticipate questions before they come to them through their regular channel, to decide first, and hear afterwards*'* (K) of the twelve counsellors, says Antilon 'Two only were interested'—Suppose a suit to be brought before twelve judges—two of whom are plaintiffs in the cause, and these two should sit in judgment, and deliver their opinions, would not

*"Whether any officer has been guilty of extortion, is a question, which neither your nor our declaration ought to prejudicate; but that your declarations held out to the publick would have, in no small degree, this effect, can hardly be doubted, and on our part particularly, such a declaration would be the more improper, the last legal appeal in this province being to us; it would be to anticipate questions, before they come to us through their regular channel, to decide first, and hear afterwards." Vide upper house message 20th November, 1770.

the judgment, if given in favour of the plaintiffs, be void on this principle, *that no man ought to be judge in his own cause*, such proceedings being contrary to reason and natural equity? Two counsellors only, it seems, were interested, that is *immediately* interested? But might not others be swayed by a remote interest? Are the views of thinking men confined to the present hour? Are they not most commonly extended to distant prospects? If one of the *interested counsellors*, from his superior knowledge of the law, and constitution, and from the confidence reposed in his abilities, should have acquired an uncommon ascendant over the council, may we not rationally conclude, that *his opinion* would have great weight with *those*, who cannot be supposed equally good judges of the law, and constitution? Supposing this *interested counsellor* to be an *honest man*, ought not his opinion to have the greatest weight with mere laymen on a legal and constitutional question? The proclamation has no relation to the chancellor, says Antilon. Does not the chancellor continue to receive fees in his court according to the rates of the old table? Is not the governor chancellor, and *has* not the proclamation set up the very rates of the old table? How then can it be said, that the proclamation has no relation to the chancellor? Should some refractory person refuse to pay the chancellor's fees, What methods would be taken to enforce the payment of them? The chancellor, I suppose, would decree his own fees to be paid; would he not therefore be judge in his own cause? or if he should refuse to do the service, unless the fee were paid, at the instant of performing it, Would not this be a very effectual method of compelling payment?

"Antilon's strictures in one of his notes on the Citizen's crude notions (L) of British polity fall intirely on another person,

(L) If the governor may lawfully issue his proclamation for the establishment of fees, and it should receive a legal binding force from the decree of the chancellor, who in this province is governor, or from the determination of judges appointed by him, and removable at his pleasure—"Then may he behave with all the violence of an oppressor." The will to ordain, and the power to enforce, will be lodged in the same person; I do not assert that the governor will act tyranically; "but the true liberty of the subject (as Blackstone justly observes) consists, not so much in the gracious behaviour, as in the limited power of the sovereign."

they are the notions of Montesquieu and of the writer of a pamphlet entitled, 'The privileges of the assembly of Jamaica vindicated, etc.,' and quoted as such. Notwithstanding the appeal from the court of chancery to a superior jurisdiction, the impropriety of having the offices of governor, and chancellor united in the same person, must be *obvious to every thinking* man. 'The proclamation was the act of the governor, flowing from his persuasion of its utility; he was not to be directed by the suffrage of the council, he was to judge of the propriety of their advice, upon the reasons they should offer; they were twelve in number' and no doubt each offered his reasons apart; all this may be very true, Antilon, and *you* may still remain the principal adviser, the sole *fabricator* of the proclamation; Was the proclamation thought of, at one and the same instant, by all the twelve? Who first proposed it? If you did not first propose the measure, did you not privately instigate the gentleman, who did propose it to the board, to make the motion? I know you of old; you never choose to appear openly the author of mischief, you have always fathered your '*mischievous tricks*,' on some one else—to these questions I would request your answer, and rest the truth of the accusation on your averment; but the averments of a '*cankered*' minister are not more to be relied on, than his promises. I have charged, you say, all the members of the council with being your implicit dependents; I deny the charge; I have said, they were imposed on by your artifices; Is it the first time, that sensible men have been outwitted by a knave? You are now trying to engage them on your side, and to make them parties to *your* cause. To raise their resentment against the Citizen, you endeavour to persuade them, that they have been treated as cyphers, dependent tools, idiots, a meer rabble,

> "Nos numerus, sumus et fruges consumere nati,"
> We are but cyphers, born to eat, *and sleep*.

"To draw the governor into your quarrel, you assert, that I have contradicted him in the grossest manner; but, as usual, you have failed in your proof, 'In his proroguing speech he has declared, that he issued his proclamation solely for the

benefit of the people, by nine tenths of whom, be believed it was so understood.' That you persuaded him to think the proclamation was calculated *solely* for the benefit of the people, I easily credit, and that he really thought so, I will as readily admit: your *subdolous* attempts to involve the governor in *your* guilty counsels, and make him a partner in *your* crimes, discover the wisdom of the maxim, '*The King can do no wrong*,' and the propriety, nay the necessity of its application to the supreme magistrate of this province. I shall adopt another maxim established by the British parliament, equally, wise, and just, '*The King's Speeches are the minister's speeches.*' The distinction, perhaps, will be ridiculed with false wit, and treated by ignorance, as a device of St. Omers. The proroguing speech, though perhaps not penned, yet prompted by you, suggests that nine tenths of the people understood the proclamation was issued for their benefit; how is the sense of the people to be known, but from the sentiments of their representatives in assembly? To judge by that criterion, the proclamation was not understood by nine tenths of the people as issued for their benefit. That the application of the above maxims should give you uneasiness, I am not surprised; they throw guilt of bad measures on the proper person, on you, and you only, the real author of them; the glory, and the merit of good are wholly ascribed to you, by your unprincipled creatures; the spirited reply to the petitioners for a bishop was delivered, it is said, in pursuance of your advice: be it so, claim merit wherever you can, I will allow it, wherever it is due; but cease to impose on your countrymen, think not to assume all the merit of good counsels, and of bad to cast the blame on others. Hampden has been deservedly celebrated for his spirited opposition to an arbitrary, and illegal tax; a similar conduct would deserve some praise, and were the danger of opposition, and the power of the oppressor as great, the merit would be equal. The violent opposition, which Mr. Ogle met with, proceeded, I thought, in great measure from the cause assigned in my last paper; it certainly occasioned great discontents.

"The decree for the payment of fees '*according to the very settlement of the proclamation*,' was given, as I conceived, in his first administration. A misconception of Antilon's meaning led me into this error; that I would wilfully subject myself to the imputation of a falsehood so easily detected, will scarcely be credited, unless it is believed, that the hardened impudence, and *habitual mendacity* of an Antilon, become *proverbial*, had rendered me insensible of shame, and regardless of character. 'The Citizen has said, the proclamation ought rather to be considered as a direction to the officers, what to demand, and to the people what to pay, than a restriction of officers'— Antilon affects to be much puzzled about the meaning of the word *direction*: it is surprising he should, when he holds up the proclamation, as the standard, by which the courts of justice are to be governed in ascertaining costs, as the only remedy against the extortion of officers, by subjecting them to the governor's displeasure, and removal from office, if they should exceed the established rates, or to a prosecution for extortion, should the legality of the proclamation be established in the ordinary judicatories. It is a common observation confirmed by general experience, that a claim in the colony-governments of an extraordinary power as incidental to, or part of the prerogative, is sure to meet with the encouragement and support of the ministry in Great-Britian. That the proclamation is a point which the minister of Maryland, (*our Antilon*) wants to establish, is by this time evident to the whole province. Every artifice has been made use of, to conceal the dangerous tendency of that measure, to reconcile the people to it, and to procure their submission. Opinions of eminent counsel in England have been mentioned, the names of the gentlemen are now communicated to the publick; the state, on which those opinions were given, though called for, the person, who drew it, and advised the opinion to be taken, still remain a profound secret. The sacred name of majesty itself, is prostituted to countenance a measure, not justifiable upon legal and constitutional principles, to silence the voice of freedom, and of

censure, and to screen a guilty minister, from the just resentment of an injured, and insulted country. The whole tenor of Antilon's conduct makes good the old observation, 'That when ministers are pinched in matter of proceeding against law, they throw it upon the King.' (M) Antilon has represented the proclamation, as the immediate act of the governor, "*The governor was not to be directed, &c.*" now, to give it a still greater sanction, we are told, the governor's conduct in this very business, has met with the royal approbation. To what purpose was this information thrown out? Was it to intimidate, and to prevent all farther writing, and discourse about the proclamation? Unheard of insolence! The pride, and arrogance of this Antilon, have bereft him of his understanding; quos deus vult perdere, primo dementat. Speaking of the proclamation the Citizen has said, '*In a land of freedom, this arbitrary exertion of prerogative, will not, must not be endured.*' Antilon calls these *naughty words*, and intimates a repetition of them would be dangerous. In a free country, a contrary doctrine is insufferable; the man, who dares maintain it, is an enemy to the people, perhaps, the time may not be very distant, when this haughty, self-conceited, this *tremendous* Antilon will be obliged to lower his tone, and will find perchance my Lork Coke's saying prove true, 'That the minister, who wrestles with the laws of a free country, will be sure to get his neck broke in the struggle.' I have asserted, that the Citizen's first paper was wrote without the advice, suggestion, or assistance of any person; these words, it seems, are not sufficiently comprehensive; What words of a more extensive import can be made use of? I have denied all knowledge of the paper wrote by the Independent Whigs, till it was published in the *Maryland Gazette:* to this moment the Independent Whigs are unknown to me. The communication to some gentleman in private, of a paper wrote against an obnoxious minister, censuring his publick conduct, though the strictures might meet with their approbation, ought not to render them so culpable, as to justify the minister in loading them with the foulest, and most virulent abuse; Does the writer even deserve such treatment?

(M) Grey's Debates.

I was too well acquainted with the temper, and character of Antilon, not to be prepared against the bitterest invectives, which malice might suggest, and falsehood could propagate; such, I was persuaded, a censure of his measures, would draw on his censurer. Conscious of my integrity, confiding in the goodness of my cause, and desirous of counteracting the insiduous designs of a *wicked minister*, I took up my pen, determined to despise the calumnies of a man, which I knew, a candid publick would impute to his malevolence. The event has confirmed my apprehensions, Antilon has poured out the overflowing of his *gaul*, with such fury against the Citizen, that, to use the words of Cicero applied to Anthony.

"Omnibus est visus vomere *suo more* non dicere"

"He seems according to custom, rather to spew, than to speak.

"The extracts from Petyt were to shew, that the commons had censured proclamations issued to '*establish matters rejected by parliament in a session immediately preceding:*' That '*Former proclamations had been vouched to countenance, and to warrant the latter.*'

"The Citizen had no intention to deceive the people; no wish, that more might be inferred from his '*little scraps*,' than what was plainly announced. The proclamations alluded to, were contrary to law; and it is contended, and, I trust, it has been proved, that the proclamation for settling officers' fees is also contrary to law. Had the Citizen designedly suppressed the titles of the proclamations recorded in Petyt, would he have mentioned the author's name, and referred his readers to the very page, from which the extracts were taken? Would he not rather have imitated the conduct of Antilon, who speaking in his first paper, of a commission issued by the King to the chancellor for settleing fees, neither mentions the book, from which the quotation is given, nor the time of the transaction. I comprehend fully, Antilon, your threats thrown out against certain religionists, to shew the *greatness of your soul*, and your utter detestation of malice, I shall give the publick a translation of your latin sentence; the sentiment is truly noble, and reflects the highest lustre on its author, or adopter.

"Eos tamen laedere non exoptemus, qui nos laedere non exoptant."

"'We would not wish to hurt those who do not wish to hurt us'—in other words—I cannot wreak my resentment on the Citizen, without involving all of his religion in one common ruin with him; they have not offended me, it is true, but it is better, that ninety-nine just should suffer, than one guilty man escape; a thorough paced politician never sticks at the means of accomplishing his ends; Why should I, who have so just a claim to the character? These, Antilon, are the sentiments, and threats, couched under your latin phrase, which *you even* were ashamed to avow in plain English; how justly may I retort

——————pudet haec opprobia dici,
"Et dici potuisse, et non potuisse refelli."

"The conclusion of a late excellent pamphlet (N) is admirably suited to the present subject; I shall, therefore, transcribe it, taking the liberty of making a few alterations, and insertions. 'If we see *an arbitrary and tyrannical disposition some where*, the call for watchfullness is a loud;' *That there is such a disposition some where, and where, we all know—the proclamation, and the arrogance of its supporter, are convincing proofs.* 'A tyrannical subject wants but a tyrannically disposed master, to be a minister of arbitrary power: if such a minister finds not such a master, he will be the tyrant of his prince'—*or prince's representative*—'as much as of his fellow servants, and fellow subjects—I should be sorry to see' *the governor of this province* 'in chains, even if he were content to wear them—to see him unfortunately in chains, from which perhaps he could with difficulty free himself, till the person, who imposed them, runs away: which every good subject would, in that case, heartily wish might happen; the sooner, the better for all."

FIRST CITIZEN.

(N) Intitled, a speech against the suspending and dispensing prerogative.

CHAPTER 11.

"OLD MARYLAND MANNERS."

1773. The unruffled current of "Old Maryland Manners" was not disturbed by the storm of political events and controversal debates in progress within "the antient capital" of Maryland. Governor Eden received, from friend and foe alike, marked respect in the private circles of Annapolis society. Official consideration he commanded. As Governor of the Province, on March 28th, 1772, he laid the foundation of the present State House, the third on the same site since Annapolis became the capital of Maryland in 1694-5. As his official mallet struck the stone, a severe clap of thunder from a cloudless sky, on a beautifully clear and serene day, resounded from the skies above. (Ridgely's Annals, page 146.)

Annapolis, at this date, was the most delightful residential city of America. Its society was polished and cultivated; among its citizens were the best educated people in the colonies; the drama flourished; the arts were encouraged; its commerce extended to all seas; the trades were promoted; its bar was the most profound of the thirteen colonies; its beautiful women were elegant and accomplished; the races were run at stated intervals; foreign, provincial and local news was disseminated weekly by the single newspaper of the ropvince; education was advanced; and the courtly practice, in every position of daily life of the charming code of "old Maryland manners" made Annapolis an ideal residential city and whose praise tradition still recounts with affectionate regard.

Nor was this all. In this decade many of its beautiful and commodious dwellings, surrounded by spacious grounds, and

each resident protected from the petty noises of contiguous residents, and defended from molestation by magnificent walls, were erected. Then no endless rumbling of rattling vehicles, driven by reckless and uncontrolled Jehues, over vitrified brick pavements, disturbed the twilight sleeper or the late riser. The mechanic and tradesman could retire at sunset with assurance that the quietude of the early hours of evening would not be broken by aggressive wagoners over solid stone streets, nor yet by the screeching horn and clanging cow-bells of unrestrained youth, enjoying the noisy amusement of a straw ride over cemented road beds. No rouring trains, no screaming engines, no humming dynamos, no encircling cock-lofts counted the hours of night with the periodic stroke of a town clock. Then, no hawkers of peddling vegetables cried their wares at early hours, for municipal law required all venders of vegetable food to repair to the market in market hours; so blue-eyed maidens who had danced the night out and morning in, could gain refreshment by slumber in a day as peaceful as the night. Mr. William Eddis, the English collector of the port, who saw Annapolis at this time, wrote in his letters of this delightful place: "At present the city has more the appearance of an agreeable village, than the metropolis of an opulent province, as it contains within its limits a number of small fields, which are intended for future erections. But, in a few years, it will probably be one of the best built cities in America, as a spirit of improvement is predominant, and the situation is allowed to be equally healthy and pleasant with any on this side of the Atlantic. Many of the principal families have chosen this place for their residence, and their are few towns of the same size, in any part of the British dominions, that can boast of a more polished society."

The courtesies and attentions that the Governor, the embodiment of the invasion of public right in the creation of fees of office without license from the people, received from those who composed the opposition to his policy, "Antilon" in his first letter, outlines, and in recounting these entertainments sneers at the objects of them in this language: "but to pursue,

my train; If I can tell them with truth, that I have not only been those, who have stared with astonishment at their childish and unguarded Court familiarities even in the public streets, but that I can recount to them their courtly voyages by water, and journeys by land, their carousings, their illuminations, their costly and exquisite treats, to gorge the high-seasoned appetite of Government; if I can name the very appointments they have laid their very fingers upon, and assure them, that I have been well informed of their eager impatience for the removal of every impediment, which stood in the way of their exaltation, with many other glorious and patriotic particulars."

Mr. Eddis looked with a more conservative eye, upon the consideration the Governor received, and, as late as November 8th, 1774, when the thunders of a greater revolution were heard in the distance, wrote, when Eden was again in Annapolis, after a visit to England:—"The Governor is returned to a land of trouble. He arrived about ten this morning in perfect health. He is now commenced an actor on a busy theatre; his part a truly critical one. To stem the popular torrent, and to conduct his measures with consistency, will require the exertion of all his faculties. The present times demand superior talents, and his, I am persuaded, will be invariably directed to promote the general good. Hitherto his conduct has secured to him a well-merited popularity; and his return to the province has been expected with an impatience which sufficiently evinces the sentiments of the publick in his favor."

On March 13, 1775, Mr. Eddis said: "It is with pleasure I am able to assert, that a greater degree of moderation appears to predominate in this province, than in any other on the continent, and I am perfectly assured we are very materially indebted for this peculiar advantage to the collected and consistent conduct of our Governor, whose views appear solely directed to advance the interests of the community; and to preserve, by every possible method, the public tranquility."

Not only, to the select circle of a private company of his intimate friends, did Governor Eden dispense his generous

hospitality, but when the little city appeared in all its splendor on the anniversary of the proprietary's birth, he "gave a grand entertainment on the occasion to a numerous party; the company brought with them every disposition to render each other happy; and the festivities concluded with cards, and dancing which engaged the attention of their respective votaries till an early hour."

Although the governor led in the festivities of the province he was not unmindful of the weightier cares of state. Mr. Eddis, who spoke with the unction of a grateful heart and sanguine temperament, said of him: "He appears competent to the discharge of his important duty. Not only in the summer, but during the extreme rigour of an American winter, it is his custom to rise early; till the hour of dinner he devotes the whole of his time to provincial concerns; the meanest individual obtains an easy and immediate access to his person; he investigates, with accuracy, the complicated duties of his station; and discovers, upon every occasion, alacrity in the dispatch of business; and a perfect knowledge of the relative connexions of the country."

That "men, high-minded men," constitute a State, received additional force in that, though Annapolis, in population, was least of all the cities of America, rating scarcely over a thousand inhabitants, yet such men as Daniel Dulany, Jr., Charles Carroll, of Carrollton, Thomas Johnson, Jr., Samuel Chase, William Paca, Rev. Jonathan Boucher, Robert Eden, William Steuart, William Eddis, William Hammond, Edmund Jennings, Jonathan Pinkney and John Rogers vitalized its life and made it famous for its culture, wealth and refinement, and gained for it the title of the "Athens of America." Its social life was created and maintained by such elegant and accomplished women, refined in manners, and lovely in person, as Mary Ogle Ridout, Ann Ridgely, Martha Rowe, Miss Hallam, a queen of the stage, Annie Ogle, Peggy Steuart, Caroline Eden, Catherine Eden, Anna Peale, Mrs. William Paca, Jane Bordley, Eleanor Calvert and a host of unnamed beauties.

Therefore its social life, with such women as these as its representatives, Annapolis was "The Paris of America."

What interested these great and learned people? Dulany, the counsellor of courts; Chase, the "torch of the coming Revolution;" Paca, the interpreter of constitutions; Johnson, the friend of Washington, and his nominator as Commander-in-Chief of the Continental armies; Carroll, the future diplomat of the infant Republic—the races, the theatre, the social party, the evening sail on the Severn, and the ball—the last enjoyed in a fine commodious building yet standing that had been built for that purpose, and here Col. George Washington, of Virginia, often came to enjoy the dance and the company of the cultured men and beautiful women, who made the society of Annapolis so captivating.

As early as September 20th, 1750, a race was run on the race course, "between governor Ogle's Bay Gelding, and Col. Plater's Grey Stallion, and won by the former. For next day six horses started, Mr. Waters's horse Parrott, winning, distancing several of the running horses. On the same ground some years after, Dr. Hamilton's 'horse Figure,' won a purse of fifty pistoles—beating two, and distancing three others. Figure was a horse of great reputation—it is stated of him that, 'he had won many fifties—and in the year 1763 to have received premiums at Preston and Carlisle, in Old England, where no horse would enter against him—he never lost a race.' Subsequently, the race course was moved to a field some short distance beyond the city, on which course some of the most celebrated horses ever known in America have run. It was on this latter course that Mr. Bevan's bay horse 'Oscar,' so renowned in the annals of the turf, first ran. Oscar was bred on Mr. Ogle's farm near this city,—he won many races, and in the fall of 1808, it is well remembered, he beat Mr. Bond's 'First Consul' on the Baltimore course, who had challenged the continent—running the second heat in 7m. 40s., which speed had never been excelled"—(Ridgely's Annals of Annapolis.)

"Old Ranter" was "Oscar's" great, great, grand sire.

To these races Gen. Washington used to repair, and in his diary naively recounts his gains on the bets on the successful pacers.

The Jockey Club, established in 1750, at Annapolis, consisted of many principal gentlemen in this, and in the adjacent provinces, many of whom in order to encourage the breed of the noble animal, imported from England, at a very great expense, horses of "high reputation." This club existed for many years. "The races at Annapolis were generally attended by a great concourse of spectators, many coming from the adjoining colonies. Considerable sums were bet on these occasions. Subscription purses of a hundred guineas were for a long time the highest amount run for, but subsequently were greatly increased. The day of the races usually closed with balls, or theatrical amusements."

"Twenty-one years later, 1771, 'The Saint Tamina Society,' was inaugurated in Annapolis, and continued its anniversary celebrations for many years. The first day of May was set apart in memory of 'Saint Tamina,' whose history, like those of other venerable saints, is lost in fable and uncertainty. It was usual on the morning of this day, for the members of the society to erect in some public situation in the city, 'May-pole,' and to decorate it in a most tasteful manner, with wild flowers gathered from the adjacent woods, and forming themselves in a ring around it, hand in hand, perform the Indian war dance, with many other customs which they had seen exhibited by the children of the forest. It was also usual on this day for such of the citizens, who choose to enter into the amusement, to wear a piece of buck's-tail in their hats, or in some conspicuous part of their dress."

The first lottery drawn in this province, was at Annapolis, on the 21st September, 1753, for the purchase of a "town clock, and clearing the dock." The highest prize 100 pistoles—tickets half a pistole. The managers were Benjamin Tasker,

Jr., George Steuart, Walter Dulany, and ten other gentlemen of Annapolis.

The witch haunted Annapolis in those days. Tradition tells us, that when they built the "Brig, Lovely Nancy"—at the launch of which the following incident occured: "She was on the stock, and the day appointed to place her on her destined element, a large concourse of people assembled to witness the launch, among whom was an old white woman named Sarah McDaniel, who professed fortune-telling, and was called 'a witch.' She was heard to remark—'The Lovely Nancy will not see water today.' The brig moved finely at first, and when expectation was at its height to see her glide into the water, she suddenly stopped, and could not be again moved on that day. This occurrence created much excitement amongst the spectators; and Captain Slade and the sailors were so fully persuaded that she had been 'bewitched,' that they resolved to duck the old woman. In the meantime she had disappeared from the crowd; they kept up the search for two or three days, during which time she lay concealed in a house."

"The Lovely Nancy," did afterwards leave the stock, and is said to have made several prosperous voyages.

Underneath the bubbling current of their trifling entertainments ran the deep waters of political and economic discussion. Beneath the roar of the great torrent of debate over the proclamation and fee-bill that excited and entertained the citizens of Annapolis, was heard the sound of arms over the rates to be paid the established clergy. When the fee-bill expired in 1770, provision for the clergy failed, and the question arose under what statute they would receive their tithes.

Many contended that the statute of 1702 revived. This gave the clergy forty pounds of tobacco per poll instead of thirty, that they now received. It was Mr. Samuel Chase's opinion, given to the Rev. Mr. Barclay, first on April 3rd, and next on May 29th 1772, that the clergy had the right to sue on the sheriff's bond for the tobacco, and the sheriff himself

for money had and received. The sheriff could levy on the delinquent's property for these amounts as for other unpaid taxes. No discretion was left to the county courts to make the assessment. The sheriff had to collect. The question itself was at best difficult. The issue became more involved when the validity of the act of 1702 was attacked. It was claimed that the act was invalid because King William III, in whose name the legislature had been summoned, had died before the assembly had met and passed the law. Answer was made to this that, then, if the act of 1702 was not law, the act of 1700, repealed by the statute of 1702, was still in force, and that, also, made the rates of the clergy forty pounds of tobacco per poll. The replication to this was that the act of 1704 repealed all prior laws with few exceptions, and that had taken force of the law of 1700. Rejoinder was made by the friends of the clergy that the act of 1704 confirmed the act of 1702, and that four succeeding statutes recognized the latter act as a binding law. Others claimed for the clergy that the act of 1700 had preserved the rights of the clergy.

It can be well imagined what a ripple of excitement was created in the midst of the already animated city when the two earlier opinions of Chase, now a leading and violent partisan of the people's party against the clergy, were published in the *Gazette*. To defend Mr. Chase from this flank attack on his new position, it was claimed that one of the opinions, at least, was a forgery. Other friends of Chase's held that the opinions were carefully guarded, merely stating what the law would be if the statute were valid. The foes of Mr. Chase accepted no excuses, but claimed that his former opinion on the statute "gives undoubted testimony" as to the vitality of the law and was a proof of the inconsistency of Chase in his bitter addresses in the Lower House of Assembly against the act.

Occupying a large portion of the *Gazette* was the correspondence of the advocates of the clergy and those who stood in opposition. Samuel Chase, Thomas Johnson, and William Paca maintained the discussion in opposition to the forty

pounds of tobacco per poll for the clergy. The validity of the act of 1702 was sustained in a vigorous and powerful arguments by the Rev. Jonathan Boucher, rector of St. Anne's Church, Annapolis. Himself no lawyer and with three of the brightest intellects of the law against him, Mr. Boucher supported his position with rare ability and extraordinary force. Mr. Paca advanced strong arguments against the constitutionality of the act of 1702. He quoted precedents showing that all similar statutes, passed after the death of the sovereign, in whose name the legislature had been called, had to be expressly confirmed by subsequent acts. One occurred in Maryland after the death of Charles Lord Baltimore. He held, therefore, that the act of 1702 was void when passed, and had never been properly confirmed. Many writers took opposing sides; but none equalled in length, interest or ability the correspondence that was maintained between Chase, Johnson and Paca on the one side, and the Rev. Mr. Boucher on the other. The keen personal allusions and direct thrusts of the rector at his opponents gave additional flavor to the cogency and fierceness of his arguments.

CHAPTER 12.

THE FOURTH LETTER OF ANTILON.

1773. Mr. Dulany now wrote his fourth and last letter in reply to First Citizen's third letter. The communication of Mr. Dulany appeared in the *Gazette* of June 3, 1773. The letter in full was:

"*Ducceris ut nervis alienis mobile lignum.*"

Hor.

Thou thing of wood, and wires by others play'd.

Francis.

"The Citizen in a former paper expressed his expectation, that 'lawyers would not be wanting to undertake a refutation of Antilon's legal reasoning, in favour of the proclamation,' and signified it to be *his* design to examine the measure, on the more general principles of the constitution. His expectation I am induced to believe from various circumstances, from occurrences extrinsick to the last performance published with his signature, and from the many peculiar marks with which the work abounds, has not been disappointed. The artifice of this shifting management obliges me to enter into a minute detail, and in this to repeat some passages of my former letters, for the purpose of giving a plain view of the subject, which my adversaries have endeavoured to perplex by their cavils, and obscure by their declamations; for I am persuaded that the better the measure, which has been branded with the character of an arbitrary tax, is understood, the more will its legality, and expediency appear.

"When the late inspection law expired, as there remained no regulation of the fees of officers, so would they have had it in their power to commit excessive exactions, if there existed no competent authority to restrain their demands, or if such

authority did exist, and was inactive. If such authority existed before the temporary act was made, it of course revived on the expiration of this act, and no declaration, or resolve of the lower house could prevent the exercise of it; because if the authority was competent, its competency was derived from the law, which can't be abrogated, altered, or in any manner controuled, but by an act of the whole legislature. The question relates to *old* or *constitutional* officers, who are supported not by salaries, but by casual fees, whose incomes are not fixed by stipend, but turn out to be more or less according to the services they perform. As the offices are *old* and *constitutional*, and thus supported by incidental fees, so is the right, to receive such fees, *old* and *constitutional*. There have been, as will appear hereafter, different regulations of these fees at different periods, none of which remained, when the late inspection law expired. The officers, being entitled to these rewards for their support, they could not be guilty of **extortion* merely for receiving fees—when they perform services. They could not commit extortion, but by taking *larger* fees than they ought, and consequently, without some positive rule, or standard, it would not be extortion, if an officer should exact *any* fees for his services. In this situation, when there was no regulation of fees, no restriction of the demands of officers, the proclamation issued, with the professed design of preventing the excessive exactions of officers, and for this purpose ordered, that no officer should receive *greater* fees, than the rates settled by the then last regulation, under pain of the Governor's displeasure, which rates were the most moderate of any, that had before been established, and in consequence of the falling of the inspection law, less beneficial to the officers. Such in substance is the proclamation. It has, however, been objected, that it did not proceed from the *professed* design of preventing extortion; but the *real* motive was the benefit of the officers, and the time, when it issued, is urged as a proof,

* Extortion is committed, when an officer, by colour of his office takes money, or other valuable thing, which is not due, or more than is due, or before it is due.

that this was the motive. The rectitude, or impropriety of the measure is not to be determined by professions, or imputations, but by its effects. Officers without settled rates of fees, would be under no legal restriction. The present regulation contains *no enforcement of payment from the people*, the officer being *left* to his *legal remedy*. When the inspection act was in force, his remedy was by execution. This effect of the new regulation can't be denied, viz. that the officer, being removeable, is restrained, by the threats of the person, who has authority to remove him, from receiving beyond the rates prescribed, and without this regulation, would have it in his power to demand, and receive fees, not only to the extent of the rates, but beyond it. The little suggestion, introduced by a puerile dialogue, that a party might have the service done, and refuse payment for it, if he thought the demand not reasonable, has been answered, by shewing that an officer would not have been bound to perform a service, without payment at the time of performing it. Whence then the benefit to the officer by the restriction resulting from the proclamation? and if a benefit to the officers can't be shewn, and the restriction can't be denied, how is the professed design of the proclamation, productive of the very effects explained by it, refuted by imputing to it a different motive, with which its effects do not correspond?

"As to the time, when the proclamation issued, the new regulation was then if ever proper, because the former then ceased, and the two houses having disagreed on the subject there remained no regulation at all, so that as to this imputation,

"Cum ventum ad verum est, sensus moresque repugnant,
Atque ipsa utilitas, justi prope mater et aequi."*

"But the grand objection to the new regulation of fees is, that it *imposes a tax upon the people*, and consequently is com-

* "When we appeal to truth's impartial test,
Sense, custom, social good, from whence arise
All forms of right, and wrong, the fact denies."
FRANCIS.

petent only to the legislature. Whether this idea be proper or not, I shall consider. If when fees are due, a regulation, allowing the officer to receive them at a certain rate, be a tax, there can be no legal regulation of fees, *in any instance*, except by the legislature; but if it can be proved, that there may be legal regulations of fees *without* a legislative act, then the idea of tax is improper. I have already observed, that the lords, and commons, and the upper, and lower houses of assembly, *separately*, have allowed fees to be taken by their *necessary* officers, and since taxes *can't* be imposed but with the *concurrence of all* the branches of the legislature, I have concluded, that *these* fees are *not* taxes; but the proposition that taxes can't be laid, but by the legislative authority, is denied by my adversaries, who, in order to evade the direct consequences of the instances put, add this restriction, 'saving such cases, as are *warranted* by long immemorial, and uninterrupted usage.' This exception, they have not attempted to prove, and therefore have not advanced any reasoning for particular discussion; but their principle may be ascertained, and it will be incumbent upon them either to give up their exception, or to maintain this position, that there is *an authority to tax, warranted* by long, immemorial, and uninterrupted usage, *distinct* from the legislative; for the exception being applied to qualify the general, or major proposition that 'taxes can't be laid, but by the legislative authority' necessarily implies, that there *may* be *taxes lawfully* established by *some other*, than the legislative authority, and the exception being expressed to result from 'such cases, as are *warranted* by long, immemorial, and uninterrupted usage,' it remains to be proved, that there are such *warranted* cases of *tax*, or the exception stands on a mere supposition to evade the force of my conclusion, without any proof to support it. Now I call upon my adversaries to prove, on the principles of our constitution, that there are cases of *tax, warranted* by usage, *known* to have received *no* legislative sanction, but to have been established by the lords or commons, the upper or lower house of assembly, separately, or by

the judges. If they fail in their proof, my argument, that 'no tax can be imposed except by the legislature; but fees have been lawfully settled by persons not vested with a legislative authority, consequently the settlement of fees is not the imposition of a tax,' remains in full force. If the original settlement of any fees was a tax, it continues a tax, if it was not a tax, it can't become so from the acts of officers, and parties receiving, and paying the fees. The *origin* of it being *ascertained*, and not left to *presumption*, if the settlement of fees was originally a tax, and therefore unlawful in the commencement, the usage, or, in other words, the repeated acts of paying, and receiving, can't make it lawful: for it is an established maxim of law, if, on enquiry into the legality of custom, or usage, it appears to have been derived from an illegal source, that it ought to be abolished—if originally invalid, length of time will not give it efficacy.

"It is, indeed, strange that they, who object to the argument from precedents, should rely altogether upon them in support of a doctrine so extraordinary, as that the legality of even taxes, not laid by the legislature, may be maintained by the precedents of their having been paid, and received! For what constitutes usage; but the frequent repetition of the same acts, or examples for a long time? Wherefore, I presume, the settlement of the fees of *old constitutional* offices, *to which the right of fees was annexed when the offices were created* is not a tax, and that the lawful allowance of fees to their necessary officers by the lords &c. who are not vested with a legislative authority, is a proof of my position. Saying that these allowances are founded on the law of parliament, which is part of the general law, amounts to no more than saying, they are lawful; but the proof is wanting, that either branch of the legislature, *alone*, can impose taxes on the subject by the law of parliament.

"The judges are not governed by the law of parliament; they have no authority to tax the subject; but their allowance of fees to their necessary officers is lawful. It appears by the 21st Hen. 7th, that an officer was entitled to receive a fee of a person acquitted of a felony *on this principle*, that it was

assigned him by the *order* and *discretion of the court;* and with reason, and good conscience, for his trouble, charge, and attendance on the court with prisoners. This is a pointed authority, and I believe, has never been impeached. In the case of Shurley and Packer, Hill 13 Jac. Coke observed, that by the statute of Westm. 1st. no sheriff could take money for serving process, and that the receipt of money for such service would be extortion; but *that the judges may allow him fees*, and with such allowance he may receive them, and he cited the 21st Hen. 7th.

"Hawk. 1 book, cap. 68, speaking of the statute of Westm. 1st, observes that 'it can't be intended to be the meaning of it to restrain the *courts of justice*, in whose integrity the law always reposes the highest confidence, *from allowing reasonable fees* for the labour, and attendance of their officers; for the *chief danger* of oppression is from officers being at liberty to set their own rates, and make their own demands; but there can't be so much fear of these abuses while they are *restrained* to known, and *stated fees, settled by the discretion of the courts*, which will not suffer them to be exceeded without the highest resentment.' Do my adversaries deny this authority, have they any distinction to evade the force of it, or do they admit it? If it is admitted, it directly applies to, and supports, my position, that the settlement of fees, and restraining officers to known, and stated rates, by the allowance, and order of the judges, is not taxing the subject. To prove that fees can be settled only by act of parliament, or antient usage, they have quoted a passage from Bac. abrid. 2 Vol. 463, but in the next page of the same book, this passage, which they have omitted, occurs, 'such fees as have been *allowed* by the *courts of justice* to their *officers* as a *recompence* for *their labor and attendance* are established fees,' a position which corresponds with Hawkin's doctrine. Coke's exposition of the statute de tallagio non concedendo is again cited. 'All *new* offices erected with *new* fees, or *old* offices with *new*, fees, are a tallage (or tax) put upon the subject, and *therefore can't be done without common assent by act of parliament.*' Whenever therefore, a fee

is a tax, it can't be established *without an act of parliament.* This was the result of my major, or general proposition, which they have endeavoured to restrain by the exception, such cases as are warranted 'by long, immemorial, uninterrupted usage,' an exception directly repugnant to Coke's opinion. When fees are taxes, only the legislature can lawfully grant them; but that fees are not taxes, in the instances I have put of allowances made by the lords &c. and the judges, the legality of these allowances is a plain proof. What construction then shall the passage cited from Coke receive, that it may be reconciled with the other authorities? 'new offices erected with new fees,' my adversaries admit are out of the question, that fees may be settled or ascertained at a time subsequent to the institution of the offices, the cases, I have cited, prove, and if the construction of the passage from Coke be carried so far as to include these settlements, or rates, he is contradicted by those cases, and appears to be inconsistent with himself, not only from the case of Shurley and Packer, but the doctrine he has laid down in his 1st inst. which I shall presently consider. This being the state of the matter, there is a necessity for putting such a construction upon his words, as may reconcile his opinion with the other authorities, or it will be overruled by them. Fees may be due, without a precise settlement of the rate, and the right to receive them may be coeval with the institution, or first creation of the offices, as in the case of our old, or constitutional offices; when such fees are settled, they are not properly *new* fees, and therefore a regulation, restraining the officer from taking beyond a stated sum for each service, when he was before entitled to a fee for such service, is not granting, or annexing a *new* fee to an *old* office, but when the officer is not entitled to receive a reward from the party in the execution of an old office, or is entitled to a certain sum from him, the granting of a fee, when nothing was before due, or augmenting the sum the officer was before entitled to, creates a *new* fee, according to Coke's exposition. When a man, in consideration of receiving an adequate recompence for the service, performs work,

and labor for another at his request, without a special contract fixing the sum to be paid, he, for whom the service is done, becomes indebted. If the parties to the contract afterwards ascertain the sum due for the service, this settlement does not create a *new* debt, but fixes, or regulates the quantum or rate payable on the original contract. In this sense I understand Lord Coke, and admit that, when fees are settled, they ought not to be augmented—when services ought to be peformed without a fee, a fee ought not to be granted; but oppose any construction contrary to the authorities I have cited to establish this point *that when officers are entitled to fees, not precisely settled as to the quantum or rate*, they may be fixed, or ascertained by the authority of the judges incident to their functions, or offices, and that it is not a just objection to their exercise of this authority that 'the settlement of fees is the imposition of taxes on the subject.'

"Co. Litt. 368 is also quoted, to this effect: 'it is provided by the statute of Westm. 1st? That no sheriff or other minister of the King, shall take any reward for doing of his office, *but only that which the King allowed him*, on pain that he shall render double to the party, and be punished at the King's pleasure,' and this was the antient common law, and was punishable by fine, and imprisonment; but the statute added the aforesaid penalty. 'Some latter statutes having permitted them to take in some cases, by colour thereof, the King's officers, as sheriffs, coroners, escheators, feodaries, jailers, and the like, do offend in most cases, and seeing this act yet standeth in force, *they can't take any thing:* but where, and so far as latter statutes have allowed to them. Yet such reasonable fees as have been allowed by the courts of justice of antient time to inferior ministers, and attendants of courts for their labour, and attendance, if they be asked, and taken are no extortion.'

"In his exposition of the statute de tallagio non concedendo, Coke lays down the position, that where the grant of fees would amount to a tax, 'it can't be done without act of parliament.' In the passage just cited from the 1st inst. it appears that 'such reasonable fees, as have been allowed by the courts

of justice of antient time, &c.,' may be taken, and therefore these fees fall not under the predicament of tax which can be laid only by act of parliament.

"I must first observe, that this statute of Westm. relates only to officers supported by salaries, and not by fees from suitors. '*They are to take only that, which the King allowed them.*' The constitutional officers in Maryland, derive no support from salaries, or any other allowance, than the fees they receive from those, for whom they perform services; the right to demand, and receive such fees is coeval with the institution of their offices, and therefore they are not within the purview of this statute, which describes, and relates to, officers prohibited from taking '*any* reward for doing of their office; *but only that which the King alloweth;*' but yet notwithstanding the absolute terms of this statute, Lord Coke observes, that 'such reasonable fees, as have been allowed by the courts &c.' may be taken. The statute is so far from permitting the taking even of these fees, that the words of it are in the negative, 'not any reward shall be taken' beyond the crown's allowance, and yet, by construction, fees allowed of antient time by the judges may be taken with impunity. I have already remarked, and shewn, that this statute does not extend to constitutional officers in Maryland, whose right to receive fees is coeval with the institution of their offices, and who have no other support, than what they derive from these fees. The objectors having, however, observed, that it does not appear, 'the judges have ever imposed *new* fees by their sole authority,' I will pursue the subject a little farther, though I have already given an answer to their case, and inferences from it. The passage cited from Coke shews that fees allowed by the courts may be lawfully received even by officers described in the statute of Westm. 1st—upon the allowance of these fees surely they were *new*, the allowance was by the judges, and therefore without doubt, when made *new* fees were allowed by the judges by their sole authority. If the fees, thus allowed, were originally, when they were *new*, taxes, they have not ceased to be taxes, in consequence of the frequent repeti-

tion of the acts of payment, and receipt, and of their having obtained the denomination, 'antient fees.' Serjeant Hawkins having taken notice that 'at the common law affirmed by Westm. 1st, it was extortion for any minister of the King, whose office did any way concern the administration, or execution of justice, or the common good of the subject to take any reward for doing his service, except what he received from the King,' makes this remark, 'surely this was a most excellent institution, highly tending to promote the honor of the King, and the ease of the people, and hath always been thought to conduce so much to the public good, that *all prescriptions whatsoever*, which have been *contrary* to it, have been holden to be void, and upon this ground it hath been resolved, that the prescription by virtue whereof the clerk of the market claimed certain fees for the view, and examination of all weights and measures, was merely void.' The allowance therefore of the judges was lawful, when made, and when the fees were *new* or it could not become so by length of time, since *no* prescription contrary to the common law, affirmed by the statute of Westm. 1st is good. Hence it appears that the judges have an authority incident to their office to settle the rates of fees. That the settling, or fixing the rates of fees has been deemed to be a proper preventive of excessive exaction will, moreover appear from the following proceedings. Among the rules, and orders of the court of chancery published in the year 1739, the following order occurs—'it is his Majesty's pleasure, that the judges of all his Majesty's courts at Westminister do impanel juries of the officers, and clerks of the same court, to enquire what fees have been usually taken by the several officers for the space of thirty years last past, upon certificate whereof his Majesty will take such course for settling fees, as to his wisdom shall seem meet, and the lord keeper is to signify this his Majesty's pleasure to the judges of the other courts, that they may perform the same this term!' Among the rules, and order of C. B. published in 1708 is one, to the following effect, 'a jury of able, and credible officers, clerks, and attornies once in three years shall be

impanelled, and sworn to inquire of new, exacted fees, and of those, who have taken them under whatever pretence, and to prepare, and present a table of the due, and just fees, that the same may be fixed, and continued in every office.'

"In the year 1743, an order was made in chancery by Lord Hardwicke, reciting that 'the King *upon the address of the commons* had issued his commission for making a diligent, and particular survey, and view of all officers of the said court, and inquiring what fees, rewards and wages every of these officers might and ought lawfully to have in respect of their offices, and what had of late time been unjustly encroached, and imposed upon the subject, that the commissioners should propose in writing means and remedies for reforming abuses, and certify their proceedings to his Majesty in chancery, reciting also the execution of this commission, and the certificate of it, and that his lordship, being desirous that the suitors should enjoy the benefits proposed in the certificate, had thought proper the same should be established by the authority of the court, and observed, till some further or other provision should be lawfully made touching the premises, therefore his lordship by the *authority* of this honorable *court*, and with the *advice* and *assistance* of the master of the rolls, doth hereby order, and direct, that the masters, or their clerks do not demand, or take any greater fees, or rewards for business in their respective offices, than the fees or rewards following viz.' Then are added tables of the fees of the respective officers. Among the fees settled by this order, with the advice of the master of the rolls, are the fees claimed by the *latter*, and the officers, not observing this order, are threatened with the same punishment, as for a contempt of the court. A provision is made for the payment of the fees of chancery by this rule, 'if any cause be set down for hearing, in which the fees have not been paid, this may be alleged by the officers to stop the hearing of the cause,' and the hearings of causes have been accordingly stopped by the court, on the clerk's insisting to have his fees paid, or secured. 2d P. W. 461. 2 Vez. 112. Roll, chief justice,

declared that 'if a client, when his business is dispatched, refuse to pay the officer in court the fees due to him for doing the business, an attachment upon motion will be granted against him for commitment, till he pay the fees due; for the not paying fees is a contempt of the court, and the court is bound to protect their officers in their rights.' P. R. 598.

"How has the greater part of fees been settled, or ascertained, but by the allowance of the courts on the principle explained by Hawkins, in pursuance of the authority incident to the offices of chancellors, and judges? Every instance of a fee so settled, contradicts the notion, that the settlement of the rates of fees is a tax, because it is not competent to any other than the legislative authority to tax. This power of the judges is founded on utility, justi prope mater & æqui, for, without the restriction of fixed rates, officers might commit excessive exactions to the grievous oppression of the people. If it should be asked, how does it appear, that the far greater part of fees hath been settled by the allowance of the courts and not by statutes? I answer, because the officers entitled to fixed rates can derive this right only from the determination of the courts, or the provision of statutes, and it does not appear by the statutes, to which we may have recourse, and collect the instances, wherein fees are settled by them, that the legislative provisions extend to any considerable proportion of the fees of officers.

"The proceedings of the commons in 1752, as I observed in my former letter, shew the opinion of the committee to have been that tables of fees fixed and established by the authority of the judges would be the proper means to prevent excessive exactions, and the committee could not but know that the greater part of the fees was claimed by the officers, independent of statutes, and this claim would be more firmly established by the proposed tables. If these fees were taxes, and therefore unlawful, it is not to be imagined that a measure would have been recommended by the commons, tending in any degree to countenance an infringement of the 'privilege, they are so peculiarly tenacious of, that of their being the first spring of

all taxes. This remark applies to the order of Lord Hardwicke in 1743, in consequence of the address of the commons, and the commission from the king. When fees are due to officers, and the rates not fixed, the judges, in very many instances, are obliged by statute law to settle or assess, the fees. For at the common law, costs were not given to plaintiffs, though the justices in eire, in assessing damages, usually assessed a sum sufficient to satisfy the costs expended; but the statute of Gloucester is the first principal act, which gives costs, and though only the costs of the writ are taken notice of in this statute, yet the provision hath been extended by construction to the other charges of suit. Where costs are due, the judges are *obliged* to award them. The sum, or amount of them *must* be ascertained—in this amount are the fees of the officers, which must therefore be ascertained, if not otherwise fixed, by the allowance of the judges. When fees are due, and the rates not fixed, the judges are not only authorized, but obliged by statute to settle the rates, because they are obliged to award costs, a duty they can't perform without ascertaining the fees. I have already observed, that justice can't be administered without the exercise of this authority, the statute law can't be carried into execution without it, and have still the presumption to conclude, that what is essential to the administration of justice, to the execution of the law, to the general protection of the people, is not like the ship-money, an arbitrary, despotic imposition derogatory from the fundamental principles of a free constitution, though an orator on a table, magno blaterans clamore (sputtering with great vociferation) should bellow out his horrible indignation.

"I shall now proceed to examine such of the objections to the present regulation of fees, as are not already directly obviated, without paying much attention to the flowers, and ornaments of declamation, with which they are most admirably bedecked.

"Objection. The act of assembly, which regulated the fees of officers was temporary, principally, on this consideration, that there might be frequent opportunities of correcting and

altering the tables of fees; but if fees may be settled by any other, than the legislative authority, upon the expiration of the temporary act, then the regulation of the fees by the temporary act may become perpetual, against the intention of the delegates, who concurred in enacting the temporary law.

"Answer. Though such was the motive, as the objection assigns for making the act temporary, yet when the act expired, the authority, which existed before the enaction of the temporary law, of course revived, so that the question is, whether there was an anterior authority to settle the rates of the fees due to the officers? which I have already considered. The rates settled by the temporary act might justly be adopted in the new regulation, and very properly, because the most moderate of any, that had ever been established; but the whole regulation could not be continued because it gave the remedy of execution to the officers. At any time before, or after the expiration of the temporary act, the tables of fees, without doubt, might have been corrected, or altered, by the whole legislature, *not by the delegates alone*, but the operation of the temporary act did not, in any degree, extend beyond its limited duration. Whilst in being, it controuled all other authority; when it ceased, all its controul of any pre-existent authority ceased.

"Objection. If the judges have authority to settle the rates of fees, when fees are due, but their rates not fixed, there was no occasion for the parliament to ascertain fees, in a variety of instances. If the judges can settle fees, as well as the parliament, there would '*seem*' to be two distinct powers capable of the same thing, and, '*if co-equal*,' they may clash. If the legislative branches should disagree, and in consequence of such disagreement, there should not be a regulation of fees by an act, the interposition of parliament may be rendered nugatory, should the want of a legislative regulation be supplied by the authority of the judges.

"Answer. Parliament may have peculiar motives for settling fees in various instances—when laws are enacted, requiring

the services of officers, the merit of such services are very properly considered, and the reward ascertained. Peculiar penalties, which judges can't inflict on the general principles of law, may be deemed expedient on many occasions. Judges may establish rules of practice in their courts; but the practice of courts has been regulated by parliament in various instances, and without doubt, may be in all. The notion of parliament, and the judges having a co-ordinate power, which might clash in the exercise of it, is too whimsical to require a serious answer. Parliament consists of three branches, and they must all concur to establish laws, and how the judges, by supplying the want of a legislative regulation when there is none, can render the interposition of parliament nugatory, is beyond my conception. The interposition of parliament, declaring the legislative will, is a law, without such a declaration constituting law, there can be no interposition of parliament. The power of the judges will prevail against the declaration, or resolve of one branch of the legislature, because this power is controulable only by a law, and such declaration, or resolve is not a law, nor has it any degree of constitutional efficacy either in prohibiting the exercise of any prior legal authority, or in conferring a right to exercise an authority, not before legal.

"Objection. Should the leading members of one branch of the legislature be deeply interested in the regulation of fees, that branch would probably endeavor to obtain an exorbitant provision, which another branch would dissent to. The two branches disagree, and no law is made. A necessity for the judges to act is insisted upon, and they may, '*perhaps*,' establish the very fees, perpetually, which one branch condemned as excessive—judges who hold their seats during pleasure.

"Answer. I might in my turn, suppose leading members of turbulent dispositions requiring what they expect will be opposed, with the view of having a subject for clamour; who would be of very little importance in times of tranquillity, and order, whose ambition it is—'to ride on the whirlwind, and direct the storm.'

"The fact, I believe, was, that both branches agreed so far, that if a regulation had been established by an act to the extent of that agreement, the fees settled by the late inspection law would have been reduced on an average, one-third—I mean by the alternative extended to the planters to pay in money, or tobacco, and that a regulation of fees, according to the old tables, adopting this alternative, would have given general satisfaction. One branch held this to be a sufficent diminution of fees, the other contended for a greater. The power of the judges, not having been restrained by the superior authority of the legislature, remained in full force. It will not, I trust, be directly affirmed, that the proposition of the one branch, dissented to by the other, has the force of a law, though some consequences, drawn from the resolves of one branch opposite to the sentiments of the other, seem to imply an opinion, that they have some degree of obligatory sanction, which they can't have, if they are not laws: for there is no medium between an obligatory declaration, or resolve of one branch, constituting any rule of conduct, when the subject is such, that the concurrence of all the branches of the legislature is necessary to establish a compleat act, and a full compulsory law. The judges, not having been restrained by the proceedings of the two houses, might, for the reasons explained, adopt the regulation approved of by the one, and condemned by the other. The action, and re-action being equal, no force remained. Their regulation having been established, it may be perpetual; but this depends upon the legislature: for it may be abolished by a law. It is true, that the judges hold their seats during pleasure, but whilst they thus hold them, they have the legal powers annexed to their stations, and their situation is such, that they rather confer a favour upon, than receive any from, government. It is even difficult to prevent their resignation, so little is their dread of removal. We must consider legal consequences, on the principles of the constitution as it is; that it may be very much improved, I have no doubt, by altering the condition of our judges, by making them independent, and allotting them a

liberal income, instead of a scanty allowance hardly sufficient to defray their daily expences. Such an alteration, I am persuaded, would be productive of a very great diminution of the fees both of officers, and lawyers, by promoting the dispatch of juridical business, and, of course, by discouraging litigiousness.

"Objection. Though the legality of the late regulation of fees be determinable in the ordinary judicatories, and course of proceeding, yet that does not prove any difference between this regulation, and the levy of ship-money: for the legality of ship-money was determined in the same course.

"Answer. This, at best, is a weak cavil founded on disingenuous misrepresentation. When the regulation of fees was pronounced to be an imposition of tax, as arbitrary, and tyrannical, as the ship-money, I stated each measure, to prove their dissimilarity. I shewed that the proclamation issued with the professed design of preventing excessive exactions—that it restrained the officers—*that there was no enforcement provided or attempted against the people*—that the officer was to seek his remedy, where every other creditor is entitled to relief—that the effect of the regulation, as to the people's payment, 'depended upon its legality determinable in the ordinary judicatories,' *there being no degree of enforcement, except what should be derived from the law in its regular, ordinary course.*—That King Charles having determined to govern without a parliament had, against the fundamental principles of a free constitution, recourse to the prerogative for raising money on the subject, and in pursuance of this scheme of tyranny, the ship-money was raised on the whole kingdom, that writs, directing the collection of the tax, required the sheriffs to execute the effects of the people, and to commit to prison all who should oppose it, there to remain till the King should give order for their delivery; but these expressions, occurring in the State, 'its legality is determinable in the ordinary judicatories,' are selected by the objectors, as if the proof of the transactions of the ship-money tax, and of the regula-

tion of fees, having different principles, and effects, rested merely on this circumstance; and moreover, the egregious misrepresentation of my argument turns out to be of no use in the application, through their extreme ignorance of the subject: for the question, respecting the legality of the ship-money tax was not determined in an ordinary judicatory, and course of proceedings.

"Objection. There has been no such necessity on account of the costs, as will justify the regulation of fees: for if fees are taxes, and taxes can be laid by the legislature only, the necessity of settling the rates ought to have been urgent, and invincible, which was not the case; but if the necessity was invincible, they, who advised the regulation, ought to have seen, that it was not occasioned by their fault; for if so, the the necessity is their accusation, and not their excuse. The blame of the supposed necessity is imputable to those, who apprehended a diminution of income by a legal regulation of fees, and have exposed their country to all the difficulties, and distress 'which the wanton exercise of arbitrary power was sure to introduce.' This objection is principally drawn from some publications, on the affair of the embargo in the 6th or 7th year of the present King.

"Answer. The occasion, and nature of the necessity to ascertain the fees, the officers were entitled to, for the purpose of enabling the judges to award costs, administer justice, and execute the laws, have been fully explained, and the question, whether these fees are taxes has been already discussed in this paper—the fixing of the rates of fees *always due*, I contend, is not a tax, and if not, the objection made on the hypothesis that it is, of course fails. The reasoning applied, in the publications on the affair of the embargo, to *that sudden, and peculiar necessity*, which, if not immediately provided against, would endanger the publick safety, it would be easy to prove, if not entirely impertinent, is quite foreign to our question. The necessity, I mentioned, is that ordinary obligation on those, who act in a judicial capacity, to discharge

their duty. The necessity of awarding costs flows from the obligation the judges are under to give them by the statute law. The necessity of settling the rates flows from the obligation they are under by the same law to award certain costs. Whose fault it was, that a legislative regulation did not take place, in consequence of the disagreement between the two houses, is a question not determinable in any jurisdiction, or by any legal authority, neither branch being amenable to any superior court. Uncommonly indistinct must the ideas of the objectors be, who confound the authority of a branch of the legislature to propose, or reject, with the functions of ministers?

"On the question, which of the two branches was blameable, very opposite suppositions may be made, imputations cast, and with equal decency, and propriety. On the one side it has been supposed, that avarice prevented the regulation of fees, because it would have been productive of a diminution of income—on the other side it may be alleged, that a very considerable diminution was agreed to, at least of one-third, in the alternative to pay in money, or tobacco, and that the imputation of avarice might be cast by men, disposed to find fault, and who have the arrogance to expect, that their dictate ought to be a rule to govern the conduct of others, if a diminution of two-thirds had been agreed to, and their proposition of a still greater reduction rejected—that if the regulation of the clergy, and officers had been established on the terms proposed by the upper house, general satisfaction would have been given, and therefore this branch deserves no reproach, who offered their consent to a measure, which, if adopted by the other, would have been thus satisfactory—that this regulation was rejected through the influence of men, whose aim it was to create confusion, and popular discontents, which they have many opportunities of fomenting by their declamations and harrangues, in which they affirm, with very little scruple, what may subserve the purposes of pleasing their vanity, magnifying their importance, celebrating their own pure, and

immaculate virtues, and gratifying their spleen against their political antagonists. A declaimer of this kind—

'Confidens, tumidus, adeo sermonis amari,
Sisennas, Barros ut equis precurreret albis.' *

——————'hic, si plostra ducenta,
Concurrantque fore tri funera, magna sonabit
Cornua quod vincatque tubas.'——————†

must speak with great energy, and pursuasive force. Thus suppositions may be made, and imputations cast on either side; but they concern not the question whether the regulation of fees always annexed to *old*, or constitutional officers, *not granting fees not before due*, but fixing their rates, be a tax, or not.

"Objection. The council advised the regulation of fees. Such of the provincial judges as were of the council, concurred in the advice. The legality of the regulation may be questioned before them, as judges; but this question was, '*in some degree*,' prejudged by the advice they gave in council. The court of appeals is constituted of the council, and the question may ultimately receive a decision in this court. The council in Nov. session 1770 declined giving an opinion upon the question put by the lower house, 'whether any officer had been guilty of extortion by the usual charges,' upon this principle, that 'it might come before them for decision in the court of appeals.'

*Confident, and boisterous, of such bitterness of speech that he would outstrip the Sisennae, and Barri (most infamous for their virulence) if ever so well prepared to exert their talent.

†—"When two hundred waggons croud the street,
And three long funerals in procession meet,
Beyond the fifes, and hornes his voice he raises,
And sure such strength of lungs a wonderous praise is."
FRANCIS.

"Answer. Upon the principle of this objection, the judges ought to establish no rule, 'till the legality of it is brought in question before them by the contest of parties, because the rule would, in some degree prejudge the question of its legality, which a party may choose to advance, therefore no rules or ordinances ought to be made by the courts, 'till a case between A. and B. is brought before them, and lawyers heard pro, and con, on the legality of them. This objection is, to be sure, very ingenious, though an observance of the method suggested is liable to the dull exception, that it would promote litigation, and a considerable consequential expense. The judges, without paying a *just* regard to the principle, have settled the rates of fees; they have occasionally informed themselves, *by impanelling a jury of officers.* The rates of fees have been settled in consequence of a royal commission issued on the address of the commons—the commons in 1752 thought the establishment of fees, the proper means of preventing excessive exactions. Various orders, and regulations of practice have been established by the courts, frequent have been the conferences of the judges for the purpose of settling general rules, and an uniformity of conduct. Judges have been called upon, in council, to advise their sovereign on questions of law. Judges, in inferior jurisdictions, have acted as judges, in the house of lords in the same cause. In all the cases put, the objection would apply with equal force; but I suspect, he would be deemed to be rather an odd sort of a person, who should make it, in any of them—it would be a very difficult thing, such are the *narrow* prejudices of judges, to establish the *liberal* sentiment—expedit reipublicae ut (*non*) sit finis litium, (it would be of publick advantage to have no end to suits,) and bring into contempt the adage, misera est servitus, ubi jus est vagum, (wretched is the slavery where the law is unsettled.) The question put by the lower house, and which the upper declined answering, related to the construction of an act of assembly, and transactions under it, whether certain charges were criminal or not, and consequently whether *penalties had been incurred or not.* The principle, on which the upper house acted, will

best appear from their own words.‡ The regulation of fees was *in prospect*, the question was put to obtain an answer, *with retrospect*. The one to prescribe a rule for the *future* conduct of officers, the other to draw a censure, of what *they had done*.

"Objection. Two of those, who advised the governor, were interested, and if a suit be brought before twelve judges, and two of them plaintiffs, should those two sit in judgment on their own case, and deliver their opinions in favor of their own claims, the judgment would be void. Besides in the present cases the other advisers might be swayed by the prospect of a remote interest. The governor, as chancellor, might decree his own fees, under his own regulation, or refuse to affix the seals, without immediate payment.

"Answer. This is putting one case, in the place of another of a very different nature. The advisers of the proclamation, restraining the officers, *did not act in the capacity of judges;* it flowed from the governor's authority over officers removeable by him, and as I have already said, his conduct was not to be directed by the votes of the majority of the advisers, they having no authoritative influence. I have already shewn that Lord Hardwicke had the advice, and assistance of the master of the rolls in settling the tables of fees, in which the fees, due to the latter, were included—that officers, and clerks of the courts have assisted the judges in their establishment of tables of fees. Their opinions were not binding, but their

‡"The questions, as you have proposed them, are of a very extraordinary nature, and of a tendency inconsistent with the spirit of our constitution. The resolves, or declarations of one, or both houses, however assertive in opinion, and vehement in expression, are not laws, nor ought they to be promulgated to influence the determination of the legal appointed courts. Juries, and judges ought there to give their decisions without prejudice, or bias. Whether any officer has been guilty of extortion, is a question, which neither your, nor our declaration ought to prejudicate; but that our declarations held out to the publick would have, in no small degree, this effect, can hardly be doubted, and on our part, particularly such a declaration would be the more improper, the last legal appeal in this province being to us: it would be to anticipate questions before they come to us through their regular channels, to decide first, and hear afterwards."

information was called for. The authority to regulate was reposed in the chancellor, and judges, and the establishments flowed from *their* authority. As to the supposition that the other advisers might be swayed by their prospects, it is of such a kind, that it may be applied on all occasions—it may be applied to the *most violent demagogues* and *experience* would give it a colour. The absurdity in supposing, that the governor is included in a proclamation threatening those officers with *his* displeasure, who should not obey *his* orders, has been sufficiently exposed. If he should have occasion to sue for fees due to him as chancellor, he could not, in the court, where he is the sole judge. He receives his fees now, and would be equally entitled to receive them if the proclamation had not issued. This part of the objection is not more extraordinary, on account of the extreme ignorance it betrays, than on this, that the fee for the seals was the same in all the proposed regulations.

"Objection. Any person, the *least* acquainted with the arguments in favour of ship-money, and the dispensing power, will perceive that Antilon's defence of the regulation of fees is a repetition, and revival of them 'tricked off in a new dress to hide their deformity, the better to impose on the unthinking and unwary.'

"Answer. A person, the *least* acquainted with those arguments, may *imagine* they have been revived; but no one, *well*, or *even a little* acquainted with 'em, can. The assertion of the objectors is at random. They might as well have called the defence, a papal anathema, or bull in caena Domini—such imputations, unsupported by proof, would almost disgrace the character of a spouting declaimer, too contemptible to be regarded.

"Objection. That the argument from precedents doth not prove the right; it proves nothing more than a deviation from the principles of the constitution, in those instances, wherein the power hath been *illegally* exercised—that the inference from the precedent in New-York ought to be treated with

great contempt, perhaps, even with some indignation, and a pamphlet is quoted to shew, that the argument from precedent is inconsistent with the doctrine advanced by the author of it. The quotation is too long to repeat here, and therefore I refer the reader to the Citizen's last letter.

"Answer. This pointless shaft hath been before thrown, without reaching the object, and '*if I comprehend it right*,' there would be no difficulty in ascertaining the quiver, whence it was supplied.

"'The use of precedents, must be perceived, when the inconveniencies of contention, which flow from a disregard of them are considered and especially when they are severely felt; when we reflect, that the intercourse of the members of political bodies, the measures of justice in contests of private property, the prerogatives of government, and the rights of the people are regulated by them.' (See the message from the upper house, December session 1765.)

"But I most readily admit that, 'if what has been done, be *wrong* it confers no right' to repeat the wrong, that '*oppression*, and *outrage* can't be justified by instances of their commission,' and that '*if* a measure be *incompatible with the constitutional rights of the subject*, it is so far from being a *rational* argument, that consistency requires an *adoption* of the proposed measure, that, on the contrary, it suggests the strongest motive for *abolishing* the precedent, and therefore when an instance of *deviation* from the constitution is pressed, as a reason for an establishment *striking at the root of all liberty*, it is inconclusive.'

"The precedents, I have cited, directly apply. I have not attempted to draw any consequences from them, in support of a 'measure incompatible with the constitutional rights of the subject, or an establishment striking at the root of all liberty.' The common law results from general customs, precedents are the evidences of these customs, judicial determinations and decisions the most certain proofs of them, and the arguments therefore from precedents, the practice of courts, the decisions

of judges respectable for their knowledge, and probity, and from the convenience of uniformity, are of great weight. I have proved that justice can't be administered, nor the laws duly executed without a settlement of the rates of fees, that an authority to settle them is necessary to the protection of the people, who, if officers were not restrained, would be exposed to the hazard of very great oppression. The *conclusion*, I confess *is not very favourable to the liberal* sentiments, and *generous* views of *those, who are adverse* to the *narrow restrictions of systematical certainty, and if allowed to choose their ground* would, like Archimedes, undertake to turn the world, which way they please.

"'*You* knew *me* of *old*.' *You* have the advantage, if *your memory* hath not been impaired, for *I* did not know *you* and *yet* Cimex, you have my wish,

——————ut dique, deaeque,
Vestrum ob consilium, donent tonsore————*

take back your shaft, and preserve it. There may be a future occasion, for its use.

"Objection. If fees may be settled at one time, they may be increased at another, as happened in the year 1739, when the fees of sheriffs were increased by proclamation.

"Answer. The end, or design of settling fees being once accomplished, I apprehend, on the principles I have fully explained, that the rates of them can't be altered, and therefore, if the fees of sheriffs were increased in 1739, the measure was wrong; but I don't know, or believe that the fees of sheriffs were increased in 1739, having searched for the proclamation without being able to find it. In 1735 there was a petition from several sheriffs to the Governor in council for an allowance of several fees, alleged to have been *omitted* in the table, settled by the proprietary in 1733, and always established and allowed either by acts of assemby, or by the

*————" may the powers divine,
For this same friendly assistance of thine,
Give thee a barber in their special grace."

governors in council, and the fees so omitted were particularized in an annexed schedule. The order on this petition was, that such of the fees omitted in the table, as had been settled by any act of assembly, or former order, should be allowed to the sheriffs for their services, and *no more.* If this be the order meant by the objectors, it does not justify the idea they would convey, that the sheriffs' fees *settled* by the proclamation in 1733 were *afterwards increased:* for the order extended *only* to the fees *omitted* in the table, settled by the proprietary.

"Objection. If there was originally an authority, in this province, distinct from the legislative, to settle fees, that authority has been relinquished, because, as far back as 1638, a law passed for the limitation of the fees of officers, and, in 1692, the Governor's power to settle fees was expressly denied by the lower house; who insisted, that 'no officers' fees ought to be imposed upon them, but by the consent of the representatives in assembly, and that this liberty was established, and ascertained by several acts of parliament, and produced the same with several other authorities. To which the Governor's answer was that his instructions were to lessen, and moderate exorbitant fees, and not settle them. To which the speaker replied, that they were thankful to his Majesty for the same, but withal desired that no fees might be lessened, or advanced, but by the consent of the assembly, to which the Governor agreed, and an act passed the same session for regulating officers' fees.' And 'fees in this province have been generally settled by the legislature.'

"Answer. When the Governor, in 1692, undertook to regulate fees, there *was an act of assembly for the purpose*, and *therefore* he had no authority. When the last proclamation issued, there was *no* act of assembly. There was no act of parliament in 1692 to prevent the settlement of fees by an authority distinct from the legislative, when an act of the legislature does not exist, by which fees are settled; but there were various statutes, and authorities to prove, that the supreme magistrate *can't control the operation of an act of the legislature.* That this branch of the argument may be the

better understood, I shall proceed to shew, how fees have generally been settled in this province, observing in the first place, that the charter, under which we derive the power of making laws, contains a grant to Lord Baltimore of 'all rights, jurisdictions, prerogatives, royalties, and royal franchises, in as ample a manner, as any bishop of Durham, within the county palatine of Durham, then, or, at any time before, had.' And also of power, 'to appoint judges, justices, magistrates, officers and ministers, and to, do *all, and every other thing* belonging unto the compleat establishment of justice, courts, tribunals, and forms of judicature, and manner of proceeding.'

"Between 1633, and 1637, the officers appointed by Lord Baltimore, or his Governors were authorized by their commissions to demand, and receive such fees, as were usually paid in England, or Virginia for similiar services.

"In 1637, a bill for fees was framed, but not passed, in 1638 an act passed, in which there is this clause 'all fees shall be paid according to a bill upon the record of this assembly, viz.,' that of 1637. In March 1641, it was continued to the next assembly, in 1642, *the day after the session of assembly*, a table of fees was settled, and published by the governor, and council, the act having expired, in 1669, on the petition of J. Gittings, for settling the fees of the clerk of the assembly, the Governor, and council ordered that he should receive treble the fees of a county clerk. 'In the year 1676, an act passed for limitation of officers' fees; but before this act was framed the lower house were acquainted in a message from the upper that the chancellor's fees were, settled by the then late proprietary, and his present lordship would not consent to an act for settling the same, it being his prerogative, but that the list might be recorded in the journals of the house—whereupon the lower house voted, that they did not desire to intrench on his lordship's prerogative; but all they aimed at was, that the inhabitants might *certainly* know what fees they had to pay, and since nothing could be more reasonable, and that the same should be settled, and published, *they requested his lordship to ascertain the fees of all* his officers, and that fair lists thereof

might be drawn out with his lordship's assent, and copies sent to the county courts to be published and recorded, and *that an act might be drawn up for fining every officer exceeding the same.*' Pursuant to this the perpetual act of 1676 passed with this proviso, 'if any fees belonging to the several officers, and by the proprietary, or governor, *so allowed, and adjudged,* and not in this act mentioned, then it shall be lawful to have such fees as the proprietary and council shall allow, and no more; under the penalty, &c.,' and there is a similar proviso in the other acts to the year 1725. In 1692, in a bill from the lower house for recording conveyances, the clerk's fees for the service were rated, to which the upper objected, that 'the settling of fees is a matter vested by their Majesties in the governor with the advice of the council.' The indefinite act of 1676 fell under the general repealing act of 1692.

"'Governor Copley was empowered by his commission, and instructions from the crown to settle with the council, the fees of officers. In the commission from their Majesties to Mr. Blackiston, in 1692, to be commissary general, he was impowered to receive all such dues, and fees belonging to his office, as should be settled by their Majesties, or their captain general, and council.' 'Governors Nicholson, Blackiston, Seymour, and Hart, the successive governors, after Copley, appointed by the crown, till Lord Baltimore was restored, were also respectively empowered to settle the fees of officers.' I have already observed, that the fees of officers in New York are settled under a royal commission—In 1733, the temporary act that regulated fees having expired, Lord Baltimore, in council, settled tables of fees, and the rates, thus settled, were adopted by all the courts, and in all their judgments, and decrees prevailed as the rule, in awarding costs from 1733 to 1747, when the first inspection act passed. I have already taken notice of a decree of Mr. Ogle, ordering fees to be paid according to his lordship's settlement—in 1739 the upper house insisted, that 'the proprietary's authority to settle fees, *when there is no positive law for that purpose,* is indisputable, and apprehended the exercise of such authority to be agreeable to the several

instructions from the throne to the respective governments.' In 1755, the proprietary, asserted his authority to regulate fees, and objected to the inspection act, because the fees of officers were regulated by it, and the lower house being informed of it, in their address to the governor expressed their concern that, 'a regulation of fees agreed upon *after the most mature deliberation*, that had subsisted *for five years*, been *revived*, and *continued*, should be objected to by his lordship, and declared it to be their opinion, that the parts of the act, respecting officers' fees, and foreign coins were of *great advantage*, and *highly conducive to the ease, and quiet of the people*.' Such were the sentiments of the lower house in 1755.

"It appears, I presume, from these proceedings, there is but a very slight foundation for the objection, that there has been a relinquishment of any original authority to settle fees—temporary acts, after their expiration, cease to have any controul, and even these acts are the less material, on this account, that the regulation of fees by them had an effect, which no authority but the legislative could give; for as it might be inconvenient to many people to pay the officers immediately for their services, and to the officers, when they give credit to those who employ them, not to have festinum remedium (a speedy remedy) for the recovery of their dues, the several acts, regulating the fees of officers, have required a credit to be given, and allowed the fees to be collected by execution. I did presume to say in my last letter, that 'the same authority, distinct from the legislative, which hath settled fees, may settle them, when the proper occasion of exercising it occurs,' having the countenance of the maxim, 'ubi est eadem ratio ibi est eadem lex' (where there is the same law, where there is the same reason) and if maxims are disputed, there can be no end to controversy: for they can't be proved per notiora. (By any thing more known, or certain.) If it be said that the maxim has not been denied, I must observe that the attempt then was to evade it: for my position is not, that *new* fees may be imposed by the judges, but that, *when fees are due*, under a *right, coeval* with *the original*

institution of the offices, and the *sum*, or *rate is not otherwise fixed, it may* be settled by the judges; that their authority in this is necessarily incident to their offices, and that they can't discharge their duty without an actual exercise of it.

"The objectors have drawn all the inferences they could, to favour their purpose, from every precedent they have been able to collect, and yet, when apprehensive the argument would be retorted, they would have the proofs from precedents disregarded. Their definition of liberty, if corresponding with their conduct, I suspect, would be 'a licence to say, and do, as they please, with a power to controul the words, and actions of others.'

"Objection. If the fees of some of the officers should not be occasionally reduced, they would in time exceed the governor's income.

"Answer. Such an event is not probable. As the governor's income must also increase, with the increase of fees, the trouble, and expence must increase. Stated salaries would prevent this effect. Such salaries were proposed by the upper house, and rejected by the lower.

"Lord Coke, and Serjeant Hawkins have bestowed great commendations on this mode of provision, because officers, having *stated salaries*, would be under no temptation to increase, or multiply fees; but our *wiser* men determined differently. The attorney, and solicitor general of England, Serjeant Wynn, and Mr. Dunning have *presumed* to be of opinion, that there may be a regulation of fees, in Maryland, without an act of assembly; but our *wiser* men have *declared* the contrary, and who will be so '*daring*' as to question *their infallibility*. 'Homines indicium peritissimi investigatores, veri juris, et germanæ justitiæ solidam effigiem tenentes, non scientiarium umbras, et imagines sequentes.'*

"Having examined the legal reasoning, with which the profound knowledge, eminent candour, and immense patriotism of

*The most skilful index-hunters, possessed of the solid model of true law, and genuine justice, not followers of the shadows, and illusions of science.

his learned, and very worthy associates have supplied him (associates whose honest indignation is naturally aroused by *every breach* of the *laws*, which have been *ordained, in the clearest* terms, to prevent *exaction of excessive fees*, because *they* have exhibited the most *conspicuous* examples of *their own pure moderations, and strict observence of them*) I shall now more immediately address the first Citizen.

"'His grave observation, that the prince, who places an *unlimited* confidence in a *bad* minister, *runs great hazard* of having that confidence abused &c.' has the *merit of being true.*

"'Ille magno conatu magnas nugas dixerit.'

"The man in troth, with much ado,
Has found that one, and one make two."

"But I must, in the most direct terms, contradict all his assertions of the influence of a minister in Maryland; assertions most infamously false, dictated by the most corrupt heart, and persisted in with the most profligate, impudence. It is very merciful, indeed, that 'he has not compared Antilon, with Sejanus'—that he has not insinuated there is an Apicius, dives, et prodigus, and included stuprum &c. and that he has only referred to some qualities in the character of Sejanus, which I have the comfort to know are most opposite to the character of Antilon. How plainly do such foul emanations indicate their putrid source? Should I, Mr. Citizen, represent you to be a man 'tetra inflatus libidine, et consuetus alienas permolere uxores,' (of the most abandoned lust accustomed to debauch other men's wives) and refer the gentle reader to Trivetas's character of Clodius, would you not be apt to exclaim, 'I debauch other men's wives! At what calumny will falsehood, and malice stop? I debauch other men's wives! Nothing in the world can be more remote from my character.'

——————"Unde petitum"

"Hoc in me jacis? Est auctor quis denique eorum
Vixi cum quibus?"

("Is there, with whom I live, who know my heart?
Who taught you how to aim your venom'd dart.")

————"Mea sufficit una."

"('I am no rover.') Indeed, Mr. first Citizen, I Don't believe you are, any more than I believe you to be a man of honour, or veracity.

"Your assertion that the proclamation proceeded from the advice, and overruling influence of one man, I have most expressly contradicted. The governor's declarations have contradicted it. The members of the council know it to be absolutely false—many of them have already avowed the part they took in the measure, and expressed their resentment of the indignity of your imputation. What I have advanced on this topic is a direct appeal to those, who are acquainted with the transaction, and the *only* persons acquainted with it, and still you persist in your asseverations, as if you expected, that the most pertinacious impudence would cover the deformities of the basest malignity, and most profligate mendacity.

"Multa malus simulas, furiata mente laboras,
Improbus, & stultus nullo moderamine vinctus
Virtutis————

("The knave and fool together join'd,
No rules restrain, no tie can bind,
Perpetual slave to fraudful art,
Whilst rage, and malice swell your heart.")

"My appeal, he alleges, is with the view of 'engaging the governor, and council in my *quarrel*.' A man is charged with being the sole author of a measure published as the act of several persons, and these *only* are acquainted with the origin, progress, and conclusion of it. The accuser was not only no party in the measure; but was entirely excluded from all knowledge of the manner, in which it was conducted. The accused appeals to those who were concerned in, and perfectly acquainted with, the whole transaction, and this appeal is attributed to the motive of engaging them in his quarrel. Again—the members of the council, the accuser suggests, 'though sensible men, may have been *outwitted*,' but they must

still continue under the delusion, if they were '*outwitted*,' or they would not, as men of honor, avow their opinion of the legality, and expediency of the measure, and that they were equally concerned in it with the accused. If they have discovered, that they were '*outwitted*,' their conduct would be very different; they would naturally express their indignation against the man, who had deceived them—to what an astonishing pitch of impudence has this Citizen arrived! The absurd application of the maxim, 'the king can do no wrong,' to the governor (*'because he is youthful and unsuspicious'*) accountable for his conduct, and punishable by statute for acts of oppression, has been already shewn; but the Citizen, in his last gallimausry, has introduced another maxim, as he calls it, that 'the king's speech is the minister's,' and applied this to the governor (*'because youthful and unsuspicious.'*) There is no end to such babbling—

> ————" break one cobweb through,
> He spins the flight, self-pleasing thread anew;
> Destroy his lie, or sophistry, in vain,
> The creature's at his dirty work again."

"What answer should I give, if hereafter he should think proper to assert, that the governor ought to be chosen by the council out of their own body, because the pope is chosen by the cardinals. He has given some smart proofs of a versatile genius. Though a papist by profession, he can be an advocate for the established church of England, when he speaks of the revolution. Such is his address, that he may hold one candle to St. Michael, and another to the dragon.

"'You knew me of old.' Indeed. Pray, when did our acquaintance begin, how has it been improved into knowledge? Perhaps your knowledge has been gathered in your flights, when you was gifted with the powers of Ariel. Hard is it upon a poor mortal to encounter such supernatural intelligences. 'I have always fathered my mischievous tricks upon others'—roundly asserted; but what proof have you? An unhappy wretch you are, haunted by envy, and malice.

"Invidia Siculi non invenere tyranni
Majus tormentum"——

("Sicilia's tyrants could not ever find
A greater torment, than an envious mind.")

"'I want to engage you in a quarrel with the governor, and council.' I have, indeed, been led by your false, and impudent accusations to take notice of the publick insult you had offered them; but the *knowledge of their own conduct and the feelings of their own honour*, not my suggestions, or instigation, will influence their behaviour towards you. I have no spleen against Mr. Hume (as you have foolishly supposed) by whom I have often been entertained, and whose ingenuity, and literary talents I admire; but that his history is a studied apology for the Stuarts, and particularly Charles the first, all men, conversant with the English history, and constitution, and not blinded by prejudice must acknowledge. Without having recourse to the 'letters written upon his history,' I could point out very many instances to fix this character, if suitable to the design, and limits of this reply. The bill of rights, which Charles the first endeavoured to evade by mean prevarication, shews that the constitution was most clearly settled in the very point infringed by the ship-money levy. That the abdication '*rather* followed, than preceded the revolution,' is the assertion of ignorance, or prejudice—the very defence of jacobitism. The principle of it was stated in my former letter, from the reasoning of Hampden, Sommers, Holt, Maynard, and Treby. The Citizen may profess his attachment to the principles of the revolution, his regard for the established church of England, and his persuasion that it is inconsistent with the security of British liberty, a prince on the throne should be a papist, and expect his assurances (though he is a papist by profession) will be credited, because, as he informs us, 'his speculative opinions, in matters of religion, have no relation to, or influence over, his political tenets;' but we are taught otherwise and put upon our guard by our laws, and constitution, which have laid him under dis-

abilities, because he is a papist, and his religious principles are suspected to have so great influence, as to make it unsafe to permit his interference, in any degree, when the interests of the established religion, or the civil government, may be concerned. When in the ardour of his zeal, the Citizen ascribed to the resolves of one branch of the legislature an operation, which is the attribute only of a perfect legislative act, to check his temerity, I referred to former resolves of the same branch, on a subject, towards which, I imagined, he was not indifferent, and left him to reflect, what would have been the consequence of these resolves, *on his principle.*

"The Citizen's remark, on this intimation, is in general, evasive words, his usual manner. 'The unprejudiced will discern a wide difference between the two proceedings'—popery and officers' fees were not compared. The force of the resolves was the consideration, not the subjects of them; and whatever constitutional force resolves may have on the subject of officers' fees, the same they can't but have, on the subject of popery; but says the Citizen 'meminimus & ignoscimus'—'*we* remember, and *we* forgive.' This is rather too much in the imperial style *We!* It is as little my wish, as the Citizen's to rekindle extinguished animosities; tho' I think his conduct very inconsistent with the situation of a man, who owes even the toleration, he enjoys, to the favour of government. His threats, of what the next assembly may do, as if his influence would sway, his assistance be sought, or his advice admitted, in the proceedings of the delegates, notwithstanding he is not even allowed by our constitution to vote for, or in any manner, to interfere in the choice, of a delegate, are extremely impertinent. If, indeed, there should be a meeting of very different persons, at a very different place, Stentor, animated by the 'ear-piercing fife, and spirit-stirring drum,' and 'mounted high on stage or table,' might perform wonderous feats, *demonstrate by loud assertion,* and *condemn by furious obloquy,* his exertions invogorated by the applauses of surrounding admirers.

———"Magno veluti cum flamma sonore
Virgea suggeritur costis undantis aheni,
Exultantque aestu latices; furit intus aquae vis
Fumidus, atque alte spumis exuberat amnis:
Nec jam se capit unda, volat vaporater ad auras."

———"As when to the boiling Cauldron's side
A crackling flame of brushwood is apply'd,
The bubbling liquors there, like springs, are seen
To swell, and foam to higher tides within,
Above the brims they force their fiery way,
Black vapours climb aloft, and cloud the day"

"I shall still adhere to the document of Minucius, 'let us not wish to injure those, who do not wish to injure us,' and I sincerely believe, that there are but few papists, natives of Maryland, who are not justly entitled to indulgence, on this principle. The Citizen's exposition of the quotation exceeds his usual absurdity, and is too contemptible for animadversion.

"I shewed at large the Citizen's scandalous misrepresentation of Petyt, and what is his answer? He could not mean to mislead, because he referred to the jus parliamentarium, so that the reader was to turn to the work (which is in the hands of very few) to escape deception. Again—in answer to the rebuke I gave him for the extreme ignorance, his reflections on the proceedings of the house of commons in 1752 betrayed, he denies that he meant what his words imported. The commons enquired into the abuses committed by officers, and the Citizen's reflection on this proceeding was in these words, 'if *the commons* had a right to enquire into the abuses committed by the officers, *they* had (no doubt) *the power* of correcting those abuses, and of establishing the fees, had *they thought proper*.' His extreme ignorance having been exposed, he seeks to cover it by this pitiful prevarication, that he did not say the *commons, alone,* but that *the commons* had the power, and meant that *they* had *not* the power, but with the concurrence of the other branches—for shame! I said in my last letter, that the

Citizen had been constrained to admit, fees had been settled by the judges; but this he denies, and quotes a passage from his letter, to which I did not allude, to justify his denial. I had observed, 'if the idea of tax be proper, then fees can be settled in *no* instance, except by the legislature; but the lords, the commons, the courts of law, and equity in Westminster hall, the upper, and lower houses in Maryland have each of them settled fees.' Having himself quoted this part of my letter, his words are, '*they have so.*' Was not this then a direct admission? How pitiful the evasion, when he was pressed with the consequence of his direct admission?

"He having quoted Montesquieu, I observed, how crude the Citizen's ideas of the British polity were, and shewed how little countenance was given to his suggestions by that celebrated writer; but let him have his way, and he will always have an answer in some tiny evasion, or puny cavil—'Antilon's strictures on the Citizen's crude notions fall entirely (says he) on Montesquieu, and the writer of a pamphlet.'

————"Velut Aegri somnia, vanae
Tingentur species———"

———"He, like a sick man's dreams,
Varies all shapes, and mixes all extremes."

"But here I take my leave of him, till he shall have made a new collection of law from the bounty of his learned associates in politicks, as little school-boys do of *sense* by *begging it* of their seniors, when their masters set them themes. 'Id maxime quemque decet, quod est cujusque suum maxime,' (that most becomes a man, which is most properly his own) was the saying of a wise man; but a fool may choose,

————"in florid impotence to speak,
And, as the prompter breathes, like a poor puppet squeak."

ANTILON.

P. S.—The First Citizen has admitted my account of the ship-money to be, "*in the main, true*, and yet *(he says)* it is

not entirely impartial; for there *may* be a relation of *facts, generally true,* and *yet* by *suppressing* some circumstances, the writer may either *exaggerate,* or *diminish,* and *so, greatly alter their character,* and *complexion.*" *Thus,* reader, according to this Citizen's *conscience,* an account of a transaction may be, "*in the main,*" or *substantially* true, though "the *character,* and *complexion* of it be *altered* by *exaggeration* or *diminution*"— unwarily, has he betrayed the principle, on which he has *affirmed,* or *denied,* with the *most infamous mendacity.*

CHAPTER 13.

FOURTH LETTER OF FIRST CITIZEN.

1773. Charles Carroll, of Carrollton, closed the discussion with this letter, published on the 1st of July, 1773:

"'*Though* our kings can do no wrong, *and though they cannot be called to account by any form* our constitution *prescribes, their* ministers *may. They are answerable for the* administration of the government, each for *his* particular part, *and the* prime *or* sole minister, *when there happens to be one for the* whole; *he is the more so, and the more justly, if he hath affected to render himself so, by usurping on his* fellows, *by* wriggling, intriguing, whispering, *and* bargaining *himself into this dangerous post, to which he was not called by the* general suffrage, *nor perhaps, by the deliberate choice of his* master *himself.*'

Dedication to the dissertation upon parties.

"The noble author of the dissertation upon parties begins his fourth letter with the following sentiment taken from Cicero's treatise on the nature of the gods—'Balbus, when he is about to prove the existence of a supreme being, makes this observation (opinionum commenta delet dies, naturae autem judicia confirmat): Groundless opinions are destroyed, but rational judgments, or the judgments of nature, are confirmed by time.' The observation may be applied to a variety of instances, in which the sophistry and ingenuity of man have been employed to confound common sense, and to puzzle the understanding, in order to establish opinions suited to the views of interest, or of power.

"An examination of Antilon's arguments, and answers to mine, will show how forcibly the judicious remark of Balbus applies to the legal subtleties and metaphysical reasoning of

my adversary. I shall take his arguments and his answers nearly in the order they occur in his last paper.

"The revival of the governor's authority to regulate the fees of officers, on the expiration of the inspection law, is admitted, provided that authority had a legal existence; but the legality of the authority is denied; for, whether it be legal or not, is the very matter in debate—'The officers being old and constitutional, and supported by incidental fees, the right to receive *such* fees is old and constitutional,' and therefore my adversary would infer, that the fees settled by proclamation are old and constitutional.

"This inference does not follow from the premises notwithstanding the crafty insertion of the word *such*. The officers being old, the right to receive fees may be old; but the question recurs, what fees? of whom? where resides the authority of fixing the rates? for, fixed they must be, by some authority. That they may be fixed by the legislature, is admitted on all sides; should the different branches of the legislature disagree about the settlement, what authority must then interpose, and settle the rates hitherto unascertained? Antilon contends that in such case, the supreme magistrate, or the judges acting under an authority delegated from him, may settle them. If this doctrine be constitutional, what security have we against the imposition of excessive fees? Does it not give a discretionary power to the governor of making what provision he may think proper for his officers, and of rendering them independent of the people? When a service is performed, the performer is clearly intitled to some recompence, but whether he is to receive that recompence from the person served, or from another, may be a matter of doubt; the quantum of the recompence may not be ascertained, either by contract, by usage, or by law; and then in case of a dispute, must be settled by the verdict of a jury.

"If the authority to regulate the fees of officers by proclamation be illegal, the proclamation can prevent the extortion of officers only by operating on their fears of the governor's

displeasure, and of a removal from office; 'But if the proclamation had not issued prohibiting the officers from taking *other*, or greater fees than allowed by the late inspection act, then would the officers have had it in their power to have demanded *any fees.*'

"Their rapacity perhaps might have prompted them to demand most excessive fees; but under what obligation were the people to comply with their exorbitant demands?

"Suppose a person should carry a deed to be recorded in the provincial office; the clerk refuses to record it, unless the party will pay him fifty guineas; must he submit to this unreasonable exaction, or run the risk of losing his property by suffering his title to remain incompleat? To avoid that danger, the money is paid; will he not be entitled to recover of the officer by the verdict of a jury, what they might think above the real value of the service? or suffering his title to remain incompleat, might he not sue the officer for damages, first tendering a reasonable fee adequate to the trouble and expence of recording the deed? Answer, Antilon, without equivocation, yes—or no. If the officer might be indicted for extortion, what benefit could the people expect from such a prosecution, when the power of granting a noli prosequi is confessedly vested in the government? The present regulation, we are told—'contains no enforcement of payment from the people, the officer being left to his legal remedy.' There is not, it is true, any immediate enforcement of payment, unless indeed the officer should refuse to do the service, if not paid his fee, at the very instant of performing the service, which as I formerly remarked, would be in most instances an effectual method of enforcing payment.

"Suppose the officer should not insist on an immediate payment, and that his account of fees should be contested: he brings an action to recover his fees, according to the very settlement of the proclamation; to whose decision is this question to be left? To the judges? or to a jury? If to the former, and they should be of opinion, that the governor has

a right to regulate fees by proclamation, when there is no prior establishment by law, and the defendant should refuse to submit to the sentence of the court, he will be committed to jail, or the sum will be levied by execution of his effects; distress, though delayed for some time, will surely overtake him in the end. Some of the judges discover a disinclination to remain in office; they solicit a removal; granted, and approved of; others are requested to succeed them; should we not have cause to suspect the rectitude of application made to men, who have publickly declared their opinion of the legality of the measure, attempted to be enforced by the sanction of the courts of justice?

"Other methods may be employed to enforce the proclamation. The frowns of government will awe the timid into a compliance; the necessitous cannot withstand the force of temptation, or the threats of power; the disobedient, and refractory must relinquish all hopes of promotion, or of promoting their friends; who have favours to ask at court, must merit court-favour by setting examples of duty, and submission.

"It has been alleged that fees are taxes; to prove the assertion, the authority of Coke, and reasons grounded on the general principles of the constitution have been produced: mark, how Antilon has endeavored to get over the authority, and confute the reasons. One of the great objections to the proclamation is, that it imposes a tax on the people, and consequently is competent to the legislature only. Antilon contends, that fees are improperly stiled taxes, because they have been settled by the separate branches of the legislature, which only can impose a tax. I have already exposed the sophistry of this argument, I hope, to the satisfaction of the unprejudiced; some farther elucidation however, may be necessary to men not thoroughly conversant with the subject. The lords and commons, and the upper and lower houses of assembly have each separately settled the fees of their respective officers by the particular usage of parliament, which must be deemed an exception to the general law, and ought, as all

exceptions, to be sparingly exercised, and in such cases, and in such manner only, as the usage will strictly warrant. It was foreign to my purpose to inquire into this usage, custom, or law of parliament, to investigate its origin, or to examine its constitutionality. On an inquiry, it would perhaps be found co-eval with parliaments. But do you, Antilon, admit the right of the lower house to rate the fees of its officers? If you do not admit the right, to argue from the mere exercise of it, is certainly unfair in *you*. You still insist that I have admitted the right of the judges to settle the fees of officers attendant on their courts; be pleased to turn to the passage in my answer to your first paper, part of which you have cited, and then be candid enough to acknoledge, if you have not wilfully misrepresented, that you have mistaken my meaning.

"The major proposition, that taxes cannot be laid, but by the legislature, I have admitted with this exception, '*saving in such* cases, &c.'

"It was not incumbent on me to prove the exception, it is sufficiently proved by the journals of parliament; the *right*, or the *power*, if you like that word better, has been frequently exercised, whether constitutionally, or not, is another question. The two houses of parliament are the sole judges of their own privileges, with which I shall take care not to intermeddle. Inconsistencies in all governments are to be met with; in ours the most perfect, which was ever established, some may be found.

"A partial deviation from a clear and fundamental *maxim* of the constitution cannot invalidate that *maxim*.

"To explain my meaning. It is a settled principle of the British constitution, that taxes must be laid by the whole legislature, yet in one instance, perhaps in more, the principle hath been violated. The separate branches of the legislature have settled the fees of their own officers Antilon has inferred from that exception to the general rule, or maxim, which exception should be considered as the peculiar privilege of

parliament, 'that fees are not taxes.' He has admitted, (if I comprehend his meaning) that fees are sometimes taxes, that is, when imposed by the legislature; but when regulated by the judges they come not within the legal definition of a tax.

"Thus the fees regulated by the late inspection law were taxes: the same fees now attempted to be established by proclamation cease to be taxes because regulated by an authority distinct from the legislative; but are their nature and effects altered by these two different modes of settlement? should an act of parliament pass for the payment of the identical fees, said to be paid to officers, under the sole authority of the judges; according to Antilon's doctrine, the fees thus established by act would become instantly taxes; but are they less oppressive, because settled by the discretion of the judges? I presume to think them more oppressive, because of a more dangerous tendency, particularly if on a disagreement between the branches of the legislature, that authority may interpose, and establish the very fees, and along with them a variety of abuses, which the representatives of the people wish to have reformed. 'The judges are not governed by the law of parliament, they have no authority to tax the subject, but their allowance of fees to their necessary officers is lawful'—of *ancient fees*—admitted. I had observed—'*It does not appear that the judges have ever imposed new fees by their sole authority.*' In answer to this Antilon remarks:—'that the fees when originally allowed were *new*, and the allowance being made by the judges therefore they originally allowed *new* fees, and if fees were originally taxes when *new*, they have not ceased to be taxes in consequence of the frequent repetition of the acts of payment and receipt, and of their havgin obtained the denomination *antient fees*'—It will be proper to remind Antilon of another observation, which I made in my former papers on this very subject, and of which he has taken no notice. The King originally paid *all his officers* out of his own revenue; the subject was not taxed to support the civil establishment; in extraordinary emergencies, as foreign, or

civil wars, tenths, fifteenths, and other impositions were granted by the commons in parliament to defray extraordinary expenses.

"It was consistent with the principles of the constitution, and agreeable to justice, that the King who paid *all his officers* out of his own purse, should have the right of ascertaining their salaries, or of delegating that right to his judges.

"The antient fees so often spoken of, were those perhaps, which the King formerly paid, and were settled by the judges. I say perhaps, for in a matter so obscure, it would be rash to pronounce decisively. If I am right in this conjecture, *antient fees* were not originally taxes, because not paid originally by the people. *Ancient usage* according to Bacon gives fees an *equal sanction* with an act of parliament, upon this principle I apprehend, that *such fees* are presumed to have been originally established by the proper authority, although their commencement and the authority, which imposed them at this day be unknown—'At common law, none of the King's officers, whose offices did *any way* concern the administration of justice, could take any reward for doing their office, but what they received of the King'—These words are sufficiently comprehensive to take in all the inferior ministers and officers of the courts of justice. The fee of 20s. commonly called the bar fee—was '*an antient fee*, says Coke *taken time out of mind* by the sheriff—of every prisoner acquitted of felony;' and therefore according to the above principle laid down by Bacon, acquired an equal sanction with fees established by law—'an office erected for the publick good, though no fee is annexed to it, is a good office, and the party for the labour and pains, which he takes in executing it, may maintain a *quantum meruit*, if not as a fee, yet as competent recompence for his trouble.' This clearly relates to an office newly erected; but what follows seems to include the unsettled fees of all offices new and old. 'Where a person was libelled in the ecclesiastical court for fees, upon motion, a prohibition was granted—*for no court has a power to establish fees;* the judge of the court may think them *reasonable*, but this is not *binding*.' But if on a

quantum meruit—a jury think them *reasonable*, then they become *established fees*—probably the fees, which now go under the denomination, *antient fees*, and not expressly given by act of parliament, were originally established by the verdict of a jury, and their having been long allowed by the courts of justice, may be deemed presumptive evidence of such establishment. The method of reforming abuses in the courts of justice by the presentment of experienced practicers upon oath, appointed by the judges, to enquire what fees had been exacted other than '*the antient and usual fees*,' seems to favour this conjecture.

"'In the year 1743 an order was made in chancery by Lord Hardwicke reciting, that the King upon the address of the commons, had issued his commission for making a diligent and particular survey, and view of all officers of the said court, and inquiring what fees, and wages every of those officers might, and ought *lawfully* to have in respect of their offices, and what had of *late time* been unjustly incroached, and imposed upon the subject &c.'—'Then are added'—continues Antilon 'tables of fees of the respective officers, and among the fees settled by this order are the fees of the master of the rolls,' who advised and assisted the chancellor in making the settlement. How is this transaction to be reconciled with the doctrine of Hawkins, 'that the courts of justice are not restrained from allowing reasonable fees to their officers, as the chief danger of oppression is from officers being left at liberty to set their *own rates* and make their *own demands?*' In this instance certainly, if by the settlement aforesaid an imposition of *new fees*, and not an authentication of the *old and established fees* be understood, the master of the rolls was advised with, and assisted in settling his own rates. Is this proceeding consonant to the principles of justice? What says Hawkins? 'There can't be so much fear of abuses when officers are restrained to *known* and *stated fees*, settled by the discretion of the courts, because the chief danger of oppression'—&c. Should the judges be any ways interested in the

settlement (A) of their officers' fees, would not the reason assigned by Hawkins for the interposition of their authority, in the manner explained by Antilon, operate most forcibly against the exercise of it? Would it for instance be agreeable to equity and natural justice, to permit the secretary of this province to settle the fees of the county clerks, on the gross amount of whose lists he receives a clear tenth; carry the case a little further: suppose the practice had long prevailed of offering the secretary a genteel present on every grant of a commission for a county clerkship. Would it not be his interest to enhance the value of county clerkships? The gratuity would probably bear some proportion to the value of the place bargained for. Do the judges in Westminster-hall receive gratuities on granting offices in their appointment?—If they do, Hawkins' reason is felo de se—it is the strongest that can be urged against the power, which it is meant to support.

"If the judges have an interest in the offices in their disposal, a discretionary power to allow fees to their officers, is in some measure a power of settling their *own rates* and making their *own demands*. Coke's authority proves most clearly, that *new fees* annexed to *old* offices are taxes; whether the fees settled by proclamation are *new fees* remains to be considered; 'fees, says Antilon, may be due without a precise settlement of the rates, and the right to receive them, may be co-eval with the first creation of the offices, as in the case of our old and constitutional offices; when such fees are *settled* they are not properly *new* fees, and therefore a regulation restraining the officer from taking beyond a stated sum for each service, when he was before intitled to a fee for such service, is not granting or annexing a *new fee* to an old office.'

"The question therefore is now reduced to these two points—1st. Has not government attempted to settle the rates of officers'

(A) If such settlement implies a discretionary power in the judges to fix the precise rates to be paid to their officers, when they are not fixed by ancient usage, the verdict of a jury, or by act of parliament.

fees by proclamation? 2dly. Are not fees so settled—new fees? If they are, upon Antilon's own principles, government hath no right to settle them. The restraint laid on officers, by the proclamation from taking *other* or *greater* fees, than allowed by the late regulation, can be considered in no other light, than an implied affirmative allowance to take *such fees*, as were allowed by that regulation, and of course must be deemed an *intended* settlement of the rates. (B) The fees payable to our old, and constitutional officers, have been differently rated, by different acts of assembly; those various rates, were never meant to be extended beyond the duration of the temporary acts, by which they were ascertained, for, one principal reason of making those acts temporary, we have seen, was to reduce the rates occasionally, and to lessen the burthen of them. On the expiration therefore of the late inspection law, the regulation of officers' fees expired with it, that is, there remained no obligation on the people to pay the rates settled by that, or any former regulation, and consequently the fees, as to the *quantum*, or precise sum, were then unsettled. Government entertained the same opinion, and issued a proclamation to ascertain the rates, or as is sometimes pretended, to prevent extortion, because the rates being *unsettled*, the officers might have demanded *any fees;* the fees therefore not being *settled*, when the inspection law fell, the settlement of them by proclamation was a *new* settlement, and of course the fees so settled were *new;* but *new* fees according to Coke cannot be annexed to *old offices* unless by act of parliament; his authority therefore, even as explained by Antilon, proves that a settlement by proclamation of fees due to *old* offices is illegal. A mere right in officers to receive fees, cannot be oppressive; the actual receipt only of excessive or unreasonable fees is oppressive, now, who are the properest judges whether fees be excessive or moderate? Officers certainly are not, the same objections which may be made to their decision, apply to the governor, and most of them to the judges—

(B) I say intended, because the settlement by proclamation being illegal, is in fact no settlement.

juries may be partial, or packed. All these considerations plead strongly for a legislative regulation, which is liable to none of the objections hinted at. The doctrine laid down by Antilon in opposition to Coke's, teams with mischief and absurdities—'Old officers have a right co-eval with their institution to receive fees,' the inference therefore '*when their fees are not ascertained by the legislature, the judges may ascertain them*' is by no means logical, it contradicts the most notorious and settled point of the constitution, it lodges a discretionary power in the judges appointed by the crown, and formerly removeable at pleasure, to impose excessive fees, and consequently to oppress the subject, without a possibility of redress, should the king, or lords refuse to concur with the commons in passing a law to moderate the rates, and to correct abuses—'*The governor adopted the late rates as the most moderate of any*' —If he might have adopted *any other* rates, his *exceeding lenity* deserves our *warmest* thanks; but then we are more indebted to his indulgence, than to the limitation of prerogative; we cannot therefore be said to enjoy true liberty, 'for that, (as Blackstone justly observes) consists not so much in the gracious behaviour as in the limited power of the sovereign.' According to Antilon—'The late regulation of fees expiring with the temporary act, the governor's authority to settle the rates revived,' and he insinuates, 'that it was optional in him to adopt the rates of the late, or of any prior regulation, or even to prescribe rates intirely new.' If the old and constitutional officers have a right to receive fees, have they not, it may be asked, a remedy to come at that right, and if so, What remedy? The remedy, which the constitution has given to every subject under the protection of the laws. If a contest should arise between the officer and the person for whom the service is done about the quantum of the recompence, the former must have recourse to the only true, and constitutional remedy in that case provided, the trial by jury. Among other great objections to the proclamation, at least to Antilon's defence of it, are his endeavours to set aside that mode of trial, the best security against the encroachments of

power, and consequently the firmest support of liberty. The person, who calls himself Antilon, has filed a bill in chancery for the recovery of fees principally due for services done at common law: by appealing to the court of chancery, of which the governor is sole judge, and in whom, he contends, the will to ordain the rates, and the power to enforce them are lodged, he has endeavoured to establish a tyranny in a land of freedom. (C) In answer to the declaration of chief justice Roll—I shall give the declaration of a subsequent chief justice, of greater, at least, of equal authority. The case I allude to is reported by Lord Raymond 1 vol. p. 703—It was asserted by council that the court of King's bench, or judge of assize respectively, would exert their authority and commit persons refusing to pay fees due to the *old officers* of the courts, and that this was the constant practice. 'But Holt, chief justice said, he knew of no such practice; he could not commit a man for not paying the said fees. If there is a right, there is a remedy; an *indebitatus assumpsit* will lie, if the fee is certain, if uncertain, *a quantum meruit*'—and in both instances, a jury is to be judge. From hence it may be collected, that when the fees claimed by the *old* and *constitutional officers* were *unascertained* recourse was had to a jury, that their verdict might ascertain them. When fees are due to old officers, and not settled by the legislature, a jury only, upon the principles of our constitution, can settle them.

"The uniform practice of the courts cannot establish a doctrine inconsistent with those principles. 'If on enquiry into the legality of a custom, or usage, it appears to have been derived from an illegal source, it ought to be abolished; if originally invalid, length of time will not give it efficacy'—It has been already noticed, that the authority exercised by the judges of settling fees, that is, of ascertaining the *antient* and *legal fees*, in pursuance of a commission issued by the King, on the address of the house of commons, is very different from the authority now set up, of settling fees by proclama-

(C) See the governor's answer to the address of the house of delegates in 1771.

tion, issued contrary to the declared sentiments of the lower-house of assembly; if judges in this province may settle fees, because the judges in England have settled them, in the manner above mentioned, where was the necessity of ascertaining fees by proclamation? Was it to influence and guide the decision of our judges? If they have a right to exercise their own judgment in settling fees, in fact, in imposing them, Why was a standard held up by the supreme magistrate for their direction? In setting up that standard, is it not notorious, that he was advised, and principally guided by the very man, who is most benefited by that illegal settlement? Notwithstanding the misrepresented power of the English judges to regulate fees, and the different orders of the courts in Westminster-hall, for restraining the exaction of illegal fees, the encroaching spirit of office had rendered all the precautions of the judges ineffectual; insomuch that the commons in the year 1730 were obliged to take the matter under their own consideration. I mentioned in a former paper that transaction. In consequence of the enquiry—a report was made by the committee in 1732 to the house of commons, from which I gave some extracts in my first answer to Antilon. It appears from the report, 'That orders had been sometimes made for the officers to hang up publickly lists of their fees, most of which lists are since withdrawn, or have been suffered to decay and become useless; that the officers themselves seemed often doubtful what fees to claim, and *most of them* relied upon no better evidence than some information from their predecessors, or the deputies of their predecessors, that such fees had been demanded, and received'—it is hereby evident, that the regulation of officers' fees had been long neglected, that in consequence of such neglect, excessive abuses had crept into practice, and had grown from length of time into a kind of established rights: that a thorough discovery and reformation of those abuses required more time and attention, than the commons could spare from more important objects. As well might they have attempted to cleanse the Augean stables, a work, which the strength only of a Hercules could accomplish;

disgusted with the tediousness and intricacy of the inquiry, they probably chose to refer the correction of abuses to the judges, men of integrity, and best acquainted with the practices of their own officers, and of course, best qualified to reform them. It is asserted by Antilon that the legislative provisions do not extend to any considerable proportion of the fees of officers and therefore, that by far the greatest part of officers' fees hath been settled by allowance of the courts, and not by statutes—this fact may be admitted, and the inference he would draw from it be denied; that judges have allowed fees to their officers in the first instance, without the intervention of a jury to ascertain them. If the judges have acted thus, they have certainly assumed a power contrary to the petition of right, contrary to this first and most essential principle of the constitution, 'that the subject shall not be compelled to contribute to any tax, tallage, aid, or *other like charge*, not set by common consent in parliament'—All levies of money from the subject, by way of loan, or benevolence, are also cautiously guarded against by the petition of right. The very *putting* or *setting* a tax on the people, though not levied, has been declared illegal; even a *voluntary* imposition on merchandize *granted* by the merchants, without the approbation of parliament, gave umbrage to the commons, was censured and condemned. 'This imposition though it were not set on by assent of parliament, yet it was not set on by the *King's absolute* power, but was granted to him by the *merchants themselves*, who were to be charged with it. So the *grievance* was the *violation* of the *right* of the people in *setting it on* without *their assent* in parliament, not the *damage*, that grew by it, for that did *only touch* the *merchants*, who could *not justly complain thereof*, because it was *their own act and grant*'—Petyt jus parliam. page 368, 369.—A tax may be defined a rate, settled by some publick charge, upon lands, persons or goods. By the English constitution the power of settling *the rate* is vested in the parliament alone, and in this province in the general assembly.

"Representation has long been held to be essential to that power, and is considered as its origin: upon this principle the house of commons, who represent the whole body of the people, claim the exclusive right of framing money bills, and will not suffer the lords to amend them. The regulation of officers' fees in Maryland has been generally made by the assemblies. The authority of the governor to settle the fees of officers, has twice only, as we know of, interposed, but not then, without meeting with opposition from the delegates, and creating a general discontent among the people, a sure proof, that it has always been deemed dangerous, and unconstitutional. The fees of officers, whether imposed by act of assembly, or settled by proclamation, must be considered as a publick charge, rated upon the lands, persons, or goods of every inhabitant holding lands, or possessed of property within this province. That they have been looked upon as such by the officers themselves, is evident, from their lodging lists of their respective fees with the deputies from this province, to the congress at New York, who might thereby be enabled to make known to his majesty, and to the parliament, the great expence of supporting our civil establishment. The author of the considerations once entertained the same idea, but such is the versatility of his temper, such his contempt of consistency, that he changes his opinions, and his principles, with as little ceremony as he would change his coat. Speaking of the sundry charges on tobacco—'The planter (says he) pays a tax, at least, equal to what is paid by any farmer of Great-Britian possessed of the same degree of property, and moreover the planter must contribute to the support of the *expensive internal government of the colony*, in which he resides.' Now, the support of civil officers, unquestionably constitutes a part of that expence—he then refers to the appendix, where we meet with the following note:

"'The attentive reader will observe, that the nett proceeds of a hogshead of tobacco at an average are 4£ and the taxes 3£ together 7£.—Quaere—how much per cent. does the tax amount to which takes from the two wretched tobacco colonies

3£ out of every 7£—and how deplorable must their circumstances appear when their vast debt to the mother county and the *annual burthen of their civil establishments* are added to the estimate.'

"Impressed with the same idea were the same conferrees of the upper house in the year 1771. In their messages of the 20th of November they assert—'Publick offices were doubtless erected for the benefit of the community, and for the same purpose are emoluments given to support them.' All taxes whatever are supposed to be imposed, and levied for the benefit of the community. If then fees are taxes, *or such like charges*, it may be asked, how came parliaments to place such confidence in the judges, as to suffer them to exercise a power, of which those assemblies have always been remarkably tenacious, and which is competent to them only? I might answer this question by asking another; how came many unconstitutional powers to be exercised by the crown, and suffered by parliament? for instance, the dispensing power—the answer is obvious; it required the wisdom of ages, and the accumulated efforts of patriotism, to bring the constitution to its present point of perfection; a thorough reformation could not be effected at once; upon the whole the fabrick is stately, and magnificent, yet a perfect symmetry, and correspondence of parts is wanting; in some places, the pile appears to be deficient in strength, in others the rude and unpolished taste of our Gothic ancestors is discoverable—

————'hodieque manent vestigia ruris.'

It does not appear in what instances, upon what occasions, and in what manner, the judges have allowed fees to their officers—that is have permitted them to take fees, not before settled by law, usage, or the verdict of a jury. The power if conclusive on the subject, and if exercised in the manner explained by Antilon, is unjustifiable, and may be placed among those contradictions, which formerly subsisted in the more imperfect state of our constitution, and of which, some few remain even unto this day. How it came to be overlooked by parliament, may perhaps be accounted for somewhat after

this manner. The liberties which the English enjoyed under their Saxon kings, were wrested from them by the Norman conqueror; that invader intirely changed the ancient constitution by introducing a new system of government, new laws, a new language and new manners. The contests, which sometime after ensued between the Plantagenets, and the barons, were struggles between monarchy, and aristocracy, not between liberty, and prerogative; the common people remained in a state of the most abject slavery, a prey to both parties, more oppressed by a number of petty tyrants, than they probably would have been by the uncontrouled power of one. Towards the close of the long reign of Henry the 3d., we meet with the first faint traces of a house of commons; that house, which in process of time, became the most powerful branch of our national assemblies, which gradually rescued the people from aristocratical, as well as from regal tyranny, to which we owe our present excellent constitution, derived its first existence from an usurper. (D) Edward the first has merited the appellation of the English Justinian by the great improvements of the law, and wise institutions made in his reign. He renewed, and confirmed the great charter, and passed the famous statute, de tallagio non concedendo, against the imposition of, and levying taxes without consent of parliament. Within the meaning of which act, says Coke, are *new* fees annexed to *old* offices. Have any new fees been annexed to old offices since that period by the sole authority of the judges? or have they increased the old and established fees? if either, they have certainly acted against law. If Coke was of opinion, that the judges had a discretionary power to settle the fees of old offices, it is most surprizing he did not intimate as much in his comment on this statute, so often quoted. He not only ought to have declared his opinion on that occasion, but also to have shewn the difference between a settlement of fees due to old and constitutional offices, and the annexing new fees to old offices. I believe it would have

(D) Simon Montfort earl of Leicester. Vide 1st. volume parliamentary history.

puzzled him, as much as it has Antilon, to shew the difference; in realty, there is none, they are but different names for the same thing. Although the necessities of Edward, and the exigency of the times, forced him to submit to those limitations of prerogative, he frequently broke through them; from whence we may conclude, that publick liberty was imperfectly understood in that rude and unlettered age, and little regarded by a prince impatient of restraint, and fond of arbitrary power, though inclined to dispense equal justice among his subjects. The fatal catastrophe of his son, and the causes which occasioned it, are well known. In those times of discord and distraction, the greatest enormities were committed by the very men, who under a pretence of reforming abuses, sought to promote their own power.

"Equally unfortunate, and equally unfit for improving the constitution, was the reign of Richard the 2d. Hume teaches us what idea we ought to form of the English government under Edward the 3d—'Yet, on the whole it appears that the government at best was only a barbarous monarchy, not regulated by any fixed maxims, nor bounded by any certain undisputed rights, which were in practice regularly observed. The king conducted himself by one set of principles, the barons by another, the commons by a third, the clergy by a fourth; all these systems of government were contrary and incompatible; each of them prevailed according as incidents were favourable to it.'

"This short historical deduction may seem foreign to my subject, but it really is not.

"The frequent and bare faced violations of laws favourable to the people, the pardoning offences of the deepest dye, committed by men of the first distinction, or the inability to punish the offenders, the corruption and venality of the judges, all tend to discover that practices as subversive of liberty, as a discretionary power in the judges to impose fees, went unnoticed, or remained unredressed.

"From the deposition of Richard the 2d. to the battle of Bosworth, the English were continually involved in wars, foreign, or domestick. Silent inter arma leges.

"We may presume, during that period, the courts of justice were but little frequented, and the business transacted in them inconsiderable; from whence we may infer, that the rules of practice, and orders established by the judges in their courts being slightly known to the nation at large, escaped the notice of parliament, in a time of general poverty, and confusion. Frequent insurrections disturbed the peace of Henry the 7th. The first parliament of his reign was chiefly composed of his creatures, devoted to the house of Lancaster, and obsequious to their sovereign's will. The 2d parliament was so little inclined to inquire into abuses of the courts of law, or into any other grievances, that the commons took no notice of an arbitrary taxation, which the King a little before their meeting, had imposed on his subjects. His whole reign was one continued scene of rapine and oppression on his part, and of servile submission on that of the parliament. 'In vain (says Hume) did the people look for protection from the parliament; that assembly was so overawed, that at this very time, during the greatest rage of Henry's oppression, the commons chose Dudley their speaker, the very man, who was the chief instrument of his oppressions.' Henry the 8th governed with absolute sway; parliaments in that prince's time, were more disposed to establish tyranny than to check the exercise of unconstitutional powers. (E) During the reigns of Edward the 6th, Mary and Elizabeth, these assemblies were busily engaged in modelling the national religion to the court standard: their obsequiousness in conforming to the religion of the prince upon the throne, at a time, when the nation was most under religious influence, leaves us no room to expect a less compliant temper in matters of more indifference.

"In truth; under the Tudors, parliaments generally acted more like the instruments of power, than the guardians of liberty.

"The wise administration of Elizabeth made her people happy; commerce began to flourish, a spirit of industry, and

(E) An Act was passed in his reign to give proclamations the force of laws.

enterprize seized the nation; it grew wealthy, and law, the usual concomitant of wealth, increased.

"'In the 40th year of her reign, a presentment upon oath of 15 persons for the better reformation of sundry exactions and abuses supposed to be committed by the officers, clerks, and ministers in the high court of chancery was shewed to the committee,' (appointed by the house of commons in 1739, to inquire into the abuses of the courts of law and equity) 'by which presentment it plainly appeared, who were the officers of the court at that time and what were their legal fees.' It appears from the same report, that the officers of the court of chancery had exceedingly increased, since the 40th of Elizabeth to that time, by patents and grants, and in consequence, I suppose of the increased business of the court. It likewise appears from the report aforesaid, that commissions had frequently issued in former times to inquire into the behaviour of the officers in the courts of justice, with power to correct abuses. The enrolment of two such commissions in the reign of James the 1st, and four in the reign of Charles the 1st, were produced to the committee, but they certify, that no such commission had issued since the reformation.

"During the reign of Charles the 2d, parliaments were sedulously employed in composing the disorders consequent on the civil wars, healing the bleeding wounds of the nation, and providing remedies against the fresh dangers, with which the bigotry and arbitrary temper of the King's brother threatened the constitution. Since the revolution parliaments have relaxed much of their antient severity and discipline. Gratitude to their great deliverer, and a thorough confidence in the patriotic princes of the illustrious house of Brunswick have banished from the majority of those assemblies, all fears and jealousies of an unconstitutional influence in the crown. Parsimonious grants of publick money have grown into disuse; a liberality bordering upon profuseness has taken place of a rigid and austere œconomy; complacence and compliment have succeeded to distrust, and to parliamentary inquiries, into the conduct, and to impeachments of *ruling ministers*. While

parliaments continue to repose this unbounded confidence in his Majesty's servants, we must not expect to see them very solicitous to lessen the profits of officers appointed by the crown. Political writers in England, have complained bitterly of the vast increase of officers, placemen, and pensioners, and to that increase have principally ascribed an irresistable influence in the crown over those national councils. Will any impartial man pretend to say that these complaints are altogether groundless? exaggerated they may be. Let us, my countrymen, profit by the errors and vices of the mother country; let us shun the rock, on which there is reason to fear, her constitution will be split.

"The liberty of Englishmen, says an admired writer, can never be destroyed but by a corrupt parliament, and a parliament will never be corrupt, if government be not supplied with the means of corrupting; among these various means, we may justly rank a number of lucrative places in the disposal of the crown. (F)

"A member of the house of commons speaking on this very subject, before the house, expressed himself in the following manner: 'But the crown having by some means or other got into its possession the arbitrary disposal of almost all offices and places, ministers soon found that the more valuable those offices and places were, the more *their* power would be extended; therefore, they resolved to make them lucrative as well as honourable, and from that time they have been by degrees increasing not only the number of offices and places but also the profits and perquisites of each. Not only large salaries have been annexed to every place or office under government, but many of the officers have been allowed *to oppress the subject by the sale of places under them, and by exacting extravagant and unreasonable fees*, which have been *so long suffered*, that they are now looked upon as the *legal perquisites* of the office, nay, in many offices they seem to have got a *customary right* to defraud the publick, and we know how

(F) Edward Southwell, Esq; vide debates of the house of commons for the year 1744, anno 18 George 2d.

careful some of our late ministers have been to *prevent* or *defeat any parliamentary inquiry into the conduct and management of any office.*' I am inclined to think that some of our former assemblies foresaw the great power, which the offices established in this province for the furtherance of justice, and administration of government, would sooner or later throw into the hands of the persons invested with those offices; a little foresight might have discovered, that their incomes would increase amazingly with the rapid increase of population, trade, and law. Aware of the danger they wisely determined to provide a timely remedy, and fell upon the true, and only expedient, by passing temporary laws for the limitation of officers' fees, not by delegating that most important trust to judges removeable at pleasure, liable to be swayed, perhaps, disposed to overlook the evil practices of their officers, and even to countenance 'the *new invented and colourable charges of combined interest and ingenuity.*' I have mentioned the great abuses, which had infected the courts of justice in England, the methods there pursued to correct them, and to prevent the exaction of *new* and illegal fees, and the long interruption of those methods, or inquiries.

"The grievance had become so intolerable that the commons were at last forced to take cognizance of it themselves; from the necessity of their interposition, either a neglect in the judges to reform abuses, or a want of power is deducible; and hence this other inference may be drawn, that a law, limiting the fees of officers, is the best method of preventing their encroachments and illegal practices. Notwithstanding the late law many abuses had been committed by officers in the manner of charging their fees under that law. These abuses, if the proclamation should be enforced, will continue and go on increasing till they become insupportable to a free people, or the people be enslaved by a degenerate and abject submission to that arbitrary exertion of prerogative.

"The necessities of the English kings, which constrained them to have frequent recourse to parliamentary aid, first gave rise to, then gradually secured, the liberty of the subject.

"In this colony, government is almost independent of the people. It has nothing to ask but a provision for its officers: if it can settle their fees without the interposition of the legislature, administration will disdain to owe even that obligation to the people. The delegates will soon lose their importance; government will every day gain some accession of strength; we have no intermediate state to check its progress: the upper house, the shadow of an aristocracy, being composed of officers dependent on the proprietary and removeable at pleasure, will, it is to be feared, be subservient to his pleasure and command.

"I shall now proceed to examine Antilon's answers to my former arguments against the power of regulating fees by proclamation.

"The whole force of his first answer, depends on the revival of the authority, which he contends existed before the enaction of the temporary law; if that authority is illegal, it did not exist, and consequently could not revive. The reasons already assigned prove the illegality.

"2d. Answer. 'Parliament may have peculiar motives, &c. &c.' Parliament, it is true, may have many motives for settling fees in various instances. To preclude a discretionary power in the judges, incompatible with the spirit of our constitution, and to obviate the inconveniences resulting from uncertainty, and to endless litigation, should induce parliament to settle the fees in every instance. The notion of the judges and the parliament having a co-ordinate power, which might clash, was never entertained; from the absurdity of two co-equal powers subsisting in the same state, a subordination of the judges to parliament was inferred; but if mercenary officers or an artful intriguing minister, by obstructing a legislative regulation of fees, may leave the power of the judges uncontrouled by parliament, and at liberty to act, then do I insist, that the authority of parliament to regulate fees may be rendered altogether useless and nugatory.

"3d Answer. 'I might in my turn suppose, &c. &c.' Thus may the most insolent, profligate, and contemptible minister,

that ever disgraced a nation, or his prince, suppose every opposition to his measures flows from similar motives. I argue not upon supposition, but from facts. The late regulation of fees was unequal, therefore unjust. A planter paid 20s for the same service, which cost the farmer only 10s.

"To place all the subjects on equal footing was doing equal justice to all; it was bringing back the law to its true spirit and original intent. Abuses had crept into practice, owing either to design, or to a misconception of the act, or to a doubtfulness of expression; among others, fees were often charged or services not done; the delegate attempted to reform these abuses, and to lessen the rates where excessive; in this laudable attempt they were disappointed by the obstinacy and selfishness of men, who made themselves judges of their *own merits*, and *own rewards*. I agree with Antilon; 'That our constitution may be much improved by altering the condition of our judges, by making them independent, and allotting them a liberal income'—But I fancy the delegates would disagree with him about the means. They perhaps would propose to lessen the exorbitant income of an inferior officer, who does little to deserve it, who grows more insolent as he grows more wealthy, and by a reduction of fees annexed to his, and to other offices not attended with much trouble, they would probably endeavour to make such savings, as might enable them to allow the judges a genteel salary without loading the people with any considerable additional charge.

"Another very great improvement might be made in our constitution, by excluding all future secretaries, commissaries general, and judges of the land office from the upper house; until that event takes place we may despair of seeing any useful laws pass, without some disagreeable tack to them, should they clash with their particular interests. Those officers have long been connected with the law for the regulation of our staple, a law of the most salutary and extensive consequence to the community, and which has hitherto been purchased by a particular attention to their interests, and a deference to

their demands, as impolitic as unaccountable in the representatives of a free people.

"4th Answer. A great part of this answer has been already obviated. It has been noticed, that the excessive exactions so much talked of, and so much dreaded by our *merciful minister*, are mere bugbears. Freemen are not to be terrified with visionary fears, over solicitude to protect us from imaginary dangers, and a strong inclination discovered at the same time to pick our pockets, look a little like mockery. Fees being taxes; to impose them on the subject by proclamation, was as illegal as to levy ship-money by proclamation. The design of the two measures was nearly the same.

"Charles wanted to raise money without a parliament, and our upstart minister wanted to provide for himself and his brother officers without an act of assembly, as the delegates would not provide for him, and them, in a manner suitable to their wishes. Was not the legality of the ship-money assessment determinable in the ordinary judicatories? Did it not receive the most solemn sanction? The sanction of eight judges out of twelve? You still retain, Mr. Antilon, all the low evasive cunning of a pettifogger.

"'Quo semel est imbuta recens, servabit odorem Testa diu.'

"5th answer. When fees are not ascertained by law, the verdict of a jury must ascertain them, when thus ascertained—the judges in awarding costs are obliged, by statute to include them in the costs; the necessity therefore of fixing the rates of fees, either by proclamation, or by the allowance of the judges, is a *pretended* and *false* necesity; consequently not *urgent* and *invincible*. If such a necessity really exists when there is no legislative regulation of fees, it was foreseen in 1770, and ought to have been guarded against by passing an act of assembly for settling the rates. The *pretended* necessity therefore aggravates *their* crime, who from a mercenary motive prevented a regulation by law. The famine, which occasioned the embargo, was not a *sudden and peculiar necessity;* it was apprehended long before it was felt; parliament might have

been assembled, it's advice taken, and a law passed to enable his majesty to lay the embargo. The ministers were blamed for not calling the parliament in proper time, and the *necessity* of acting against law flowing from *that neglect*, was urged as *their* accusation, not their excuse. Although the question *'whose fault was it that a legislative regulation did not take place'* —be not determinable in any jurisdiction or by any legal authority, yet, has a discerning publick already decided it, and has fixed the blame on the proper person. Although he cannot be punished by the sentence of any ordinary judicature, yet might he be removed from office, on application made to the governor by the delegates of the people. Encomiums on the disinterestedness of officers, and censures of some obnoxious members, in fact, of the whole lower house, come with peculiar propriety and decorum from a man, who is an officer, and was particularly levelled at in the spirited and patriotic resolves of that house. It might have given satisfaction to *many* to have had the regulation of the clergy and officers established on the terms once proposed by the upper-house; but this satisfaction would not have resulted from a conviction, that the terms offered were just and advantageous to the publick, but from a despair of obtaining better; if this despair should become general, the cause of the publick must yield to the interest of a few officers. Disgraceful, and afflicting reflection! Not a single instance can be selected from our history of a law favourable to liberty obtained from government, but by the unanimous, steady, and spirited conduct of the people. The great charter, the several confirmations of it, the petition of right, the bill of rights, were all the happy effects of *force* and *necessity*.

"I am not surprized that Antilon's resentment should be directed against a man, who has publickly spoke some very home truths. The wit and verses borrowed from Horace cannot destroy the evidence of facts. I am restrained by the limits of this paper from descanting on the merits of tub oratory; it has its use, and abuse, like most other institutions, and is not so prejudicial to characters attacked, as the whis-

pered lye, the dark hint, and jesting story told with a sting at the end of it. I know a person, who has an admirable knack at defamation in this sly, oblique, insinuating manner; he has stabbed many a reputation with all the appearance of festivity *and good humour:* in the midst of gaiety, in the social hours of convivial mirth, malice preys inwardly on his soul; sometimes he is given to deal in the marvellous, to captivate the attention of his *admirers*—(generally fit tools for him to work with) and to leave on their minds a lively impression of his own consequence. Surrounded by a group of these creatures, he will now and then recount most wonderful wonders! '*speciosa miracula*,' celebrate his own feats, prowess, and hair breadth scapes, in short forge such monstrous improbabilities, as would shock the faith of the most credulous jew.

They listening, gape applause.

"Conticuere omnes, intentique ora tenebant."

"Answer 6. Rules or ordinances respecting the practice of the courts may be made without any danger of prejudging questions of law. 'Judges have been called upon in council to advise their sovereign *on questions of law*'—true—and in consequence of their advice, pernicious measures have been frequently pursued by sovereigns—witness, the proclamation for levying ship-money, the dispensing power, and others equally unconstitutional. These examples should make judges very careful how they advise their sovereign; for bad advice they are amenable to parliament, and some of them have been punished, for giving extra-judicial and unconstitutional opinions. 'Expedit reipublicae ut sit finis litium.' 'Misera est servitus ubi jus est vagum'—are sentiments truly liberal and useful; equally so, are these—*a free constitution will not endure discretionary powers, but in cases of the most urgent necessity. The property of Englishmen is secured by the laws, not left to depend on the will of the sovereign, or of officers appointed by him.* There is an impropriety in advising measures tending to the immediate benefit of the *advisers.* Self-interest may warp the judgment of the most upright; hence, the maxim, 'no man ought to be a judge in his own

cause.' The advisers of a measure as *legal* and *expedient* will probably remain of the same opinion when they come to determine on its legality in their judicial capacity. Should the question be brought before the court of appeals, ought the officers, who are deeply interested in its decision, to sit as judges? If it would be unjust in them to *judge* of the legality of the proclamation, there was surely some impropriety in *their advising* it. The chancellor in all causes of intricacy is advised by an assistant, whose opinion would not, I presume, be asked, if interested in the suit. Should a bill be filed against the usual assistant, for instance, by a Dutchman, could he be so insensible, as not to discover some anxiety at seeing his adversary in the capacity of an adviser, directing and guiding the opinion of the judge? Would not the impropriety strike even a Dutchman? Would he not have great reason to suspect an unfavourable decree? Had there been an open rupture, a declared enmity, which still subsisted between the assistant, and one of the parties to a chancery suit, and notwithstanding the assistant should discover an inclination to act in his usual capacity, would not his conduct raise indignation in every honest mind? Reader make the application.

"Answer 7. 'The governor was not to be directed by the votes of the majority of the advisers, they having no authoritative influence'—on a former occasion we were told—'there can be no difficulty in finding out his (the kings) ministers, the governor and council are answerable in this character.' If the governor is not to be directed by the advice of his council, Why should they be answerable for their advice? He by adopting the measures advised makes it *his own*—because he uses his *own* manly judgment, the advice of the council can have no authoritative influence over him, and therefore, according to Antilon's latter opinion, contradicted by his former, the governor must take the whole blame upon himself. Oh unsuspicious Eden! How long wilt thou suffer thyself to be imposed on by this deceiving man? 'The fee for the seals was the same in all the proposed regulations;' and none of them have the least efficacy, wanting the sanction of law. To exact fees

under the settlement of the new table, proposed by the lower house, would be equally unlawful, though not so dangerous, as to exact them under the settlement by proclamation—'*the governor receives his fees now*'—and receives them instantly, and will not do the service without immediate payment. The practice may become general, and the good natured easy people of Maryland, will, I dare say—submit to it without reluctance or murmuring.

"Answer 8. Antilon has admitted that he concurred with the rest of the council in advising the proclamation as *expedient* and *legal*—he has since justified it—as *a necessary unavoidable act.* It is not the first time that '*expediency* has covered itself under the appearance of *necessity.*'

"From whence does Antilon infer this necessity? 'The judgment, or decree, says he, awarding the costs must *necessarily* be *precise*'—but the judgment cannot be *precise*, unless the officers' fees, which constitute part of the costs be settled; if not settled by a law, they must be settled by *some other authority*—and therefore he concludes they must be settled by proclamation.—Why not by the verdict of a jury? Endless litigation, it is answered, would ensue from that method of settlement. A much greater mischief I reply—would result from the other; charges would be set, and levied on the people without, nay, against the consent of their representatives. Between two such evils. What choice have we left? The choice of the least. Hard indeed is the fate of the province to be reduced to such extremity, that *some officers* may enjoy great incomes for doing little. The secretary's office is a mere *sinecure*—yet has he had the assurance to ask a net income of £600 sterling per annum to *support his dignity.* To hear Antilon talk in this strain is enough to rouse the indignation of apathy itself, but indignation sinks into contempt, the moment we reflect on the *farcical dignity* of the man.

"Answer 9. The fees settled by proclamation have been proved a charge upon the people; now the setting a charge upon the people without the consent of their representatives, *is a measure striking at the root of all liberty.* Antilon has

endeavoured to justify the measure by precedents. The precedents he has produced do not in the least apply. The settlements of fees made by the judges appear to have been merely authentications of the *usual* and *antient* fees. The long disuse of inquiries into the conduct of officers gave them an opportunity of exacting *new* and *illegal* fees; the grievance was suffered to run on so long, that at last it became difficult to distinguish the *new* and *illegal* from the *antient* and *legal* fees. The fees so certified by the judges, were to be deemed *antient fees;* to facilitate their scrutiny—'juries of officers and clerks were impanelled to inquire, what fees had been usually taken by the several officers, for the space of 30 years last past,' on a supposition, I presume, that fees, which had been paid for so long a time, were probably *antient fees.*

"The judges therefore, I conceive, did not settle in that instance the rates of fees, but certified what were the rates *heretofore settled.*

"With us, the rates of fees were not settled: the delegates did not request the governor to issue a commission to the judges to fix the rates; they remonstrated against the apprehended exercise of the unconstitutional power of settling them by his sole authority. I hope it has been proved, that if the judges settled, that is, imposed fees, *not before settled,* they acted against law and consequently *wrong,* and therefore, '*if what has been done be wrong, it confers no right to repeat it.*' To establish which axiom the considerations were cited. I have known you, Antilon, long enough to form a true judgment of your character, and I have exhibited a true picture of it to the publick; an intimacy I have cautiously avoided, as dangerous, and disreputable. The frequent repetition of the word '*Barber*' in all your papers, makes me suspect some concealed wit or joke; perhaps it may be founded on the production of *your fertile invention:* pray disclose it—I will add it to the catalogue; you understand me.

"Answer 10. The fees allowed to the petitioning sheriffs by an order of council of the 15th of July, 1735 had, it seems,

been omitted in the proclamation issued 1733, and such fees only thus omitted as had been settled by *any act of* assembly or *established* by any former order of council were allowed: fees allowed by such orders of council, cannot, perhaps, with strictness, be called increased fees, unless the former rates were increased, but the reasons already assigned, demonstrate, they are *new fees.* Had these services, to which fees were annexed by a subsequent proclamation, been totally omitted in all former orders of council and temporary acts, would such allowance of fees have been lawful or not? If lawful, it is plain, fees would in that case have been increased, being annexed to services never before provided for—If unlawful, it should seem, that the power, which at the original creation of constitutional offices, might have annexed a fee to every service then enumerated, would be concluded, and might not annex fees to services not then enumerated, though actually performed by the officers; so that, whether an officer may lawfully receive a fee, does not depend on his doing a service, but on that service having been enumerated, and having had a fee annexed to it in the first settlement, or table of fees; but if under a right to receive fees co-eval with the institution of constitutional offices, the king or his deputies may settle fees, that is, ascertain what fees an officer shall take for doing a service, not having a settled or known fee annexed to it, then may government increase *ab libitum* the amount of officers' fees. Ingenuity will point out many services performed by old officers, that have no *settled fees* annexed to them, and the right to receive *such fees* being old and constitutional; the settlement of *such*, cannot according to Antilon's doctrine, be deemed an annexation of *new fees* to old offices.

"Answer 11. 'When the governor in 1692 undertook to regulate fees, there was an act of assembly for that purpose.' The delegates did not object to the governor's undertaking to regulate fees, *because they were already regulated by law.* If that had been the real cause of the objection they would have declared it, to have precluded at once all controversy, but they objected upon this general principle—'that it is the undoubted

right of the freemen of this province, that no officers' fees ought to be imposed on them but by the consent of the representatives in assembly'—To which general position the *governor agreed.* The delegates produced several acts of parliament to shew, that government could not settle the fees of officers by prerogative; but if they relied on the act of assembly then in force, why did they not cite it? Where was the necessity of citing acts of parliament to prove what was already most clearly decided in their favour by a positive and subsisting law of the province?—The instances mentioned by Antilon of fees settled by proclamation prove only the actual exercise of an unlawful prerogative. The dangerous use which has so often been made of bad, should caution us against the hasty admission of even good precedents, which should always be measured by the principles of the constitution, and if found the least at variance, or inconsistent therewith, ought to be speedily abolished. 'For millions entertain no other idea of the *legality* of power, than that it is founded on the exercise of power. (G) 'There is nothing saith Swift, hath perplexed me more than this doctrine of precedents; if a job is to be done,' (for instance a provision to be made for officers) 'and upon searching records, you find it hath been done before, there will not want a lawyer (an Antilon) to justify the legality of it, by producing his precedents, without ever considering the motives and circumstances that first introduced them, the necessity, or turbulence, or iniquity of the times, *the corruption of ministers,* or the arbitrary disposition of the prince then reigning.'

"Answer 12. 'It is not probable the fees of some officers will in time exceed the governor's income.' Such an event is most probable. The governor's fees as chancellor, fall far short of the register's fees for recording the proceedings of the court, copies of bills, &c. The register pays his deputy

(G) Vide Pen. Farmer's 11th letter. I recommend an attentive perusal of that letter to my countrymen; it abounds with judicious observations, pertinent to the present subject, and expressed with the utmost elegance, perspicuity, and strength.

40 or £ 50 a year, and pockets fees to the amount of 50,000 pounds of tobacco, discharged an money at 12s6 per hundred pounds. Except the marriage licenses, all the other branches of the governor's revenue will probably decrease, or continue in their present state. The secretary's and commissary's fees must increase with the increase of business, the trouble and expence do not increase in proportion. The secretary has no trouble; the expence of this office is a mere trifle compared to its profits.

"Having, at length waded through the argumentative part of my adversary's last paper, I am now come to the passages more immediately addressed to myself; for, Antilon still insists that I have assistants, and confederates; silly, as my productions are, he will not allow me the demerit of being single in my folly. Formerly I was accused of confidence, and self conceit, now I am represented as begging from others, the little sense contained in my last piece.

"Antilon can reconcile contradictions, and expound knotty points of law, just as they may suit him.—

————"Veniet hic de plebe togata
Qui juris nodos, et legum aenigmato solvat."

You see, Sir, I take every opportunity of complimenting your abilities, somewhat at the expence of your integrity, I confess, but not of truth. The observation, that, an unlimited confidence in a bad minister will be assuredly abused—'*besides the merit of being true,*' has this further merit; *the application of it to Antilon was just.* He denies in the most direct terms the pernicious influence ascribed to him. The most notorious criminals seldomest plead guilty; the assertions of *one*, who has long ago forfeited all title to veracity, cannot be credited. I repeat the questions put to you in my last paper. Was the proclamation thought of by the whole council at the same instant? Who first advised that measure? Did you not privately instigate some member of the board to open the scene of action, while you lay lurking behind the curtain,

ready to promote mischief, though unwilling to be thought the *first mover?*

"Matters of a public concern are the objects of a publick disquisition. When the real advisers of a measure, from the secrecy of the transaction, are unknown, we must look to the *ostensible minister:* if the *known* character of the *man*, should perfectly correspond with the *imputed* conduct, an assurance of the truth of the accusation instantly arises in the mind, far superior to the evidence grounded solely on his denial of the fact, and his most positive asseverations of innocence, or *confederated guilt.* '*Many members of the council have already avowed the part they took in the measure*'—and pray what part did they take? that is the very thing we all want to know. If they acted only a secondary part, if mislead by your artful misrepresentations, and sophistical reasons, they coincided with your opinion, not the least degree of blame can be imputed to them. 'They have expressed their resentment at the indignity of the imputation'—what imputation? that they were imposed on by your artifices; Are they the first, will they be last, whom you have deceived? If any gentleman of the council has taken offence at what I have said, it must be owing, either to misapprehension, or to *your crafty suggestions:* I meant not to offend, it would grieve me

——————— 'To make *one honest man* my foe.'

You still carp at the maxim, '*The king can do no wrong,*' or rather at the application of it to the governor; the publick, and you more than anyone see the propriety of the application; the governor perhaps, when too late, may be sensible of it also, and wish that he had not placed a confidence, which he will hereafter discover has been abused, and may possibly give him many hours uneasiness. '*The Citizen is a wretch,*' (says Antilon) '*haunted by envy and malice*'—Antilon has been already called upon for his proofs; the truth of the accusation rests intirely on his *ipse dixit*, which is at least presumptive evidence, that the accusation is false. Why Antilon am I suspected of bearing you malice? Have you injured me? Your suspicion implies a consciousness of guilt. What should

excite my envy? The splendor of your family, your riches, or your talents? I envy you none of these; even your talents upon which you value yourself most, and for which only you are valued by others, are so tarnished by your meannesses, that they always suggest to my mind, the idea of a jewel buried in a dunghill. As we agree in the essential point, that the revolution was both just and necessary, it is needless to say more on the collateral question, whether the abdication followed or preceded that measure; the dispute at best, is almost as insignificant as that about the words *abdicated*, and *deserted*, which disgraced the house of lords. That the national religion was in danger under James the 2d, from his bigotry and despotic temper, the dispensing power assumed by him, and every other part of his conduct clearly evince.

"The nation had a *right* to *resist*, and to secure its civil and religious liberties. I am as averse to having a religion crammed down peoples' throats, as a proclamation. These are my political principles, in which I glory; principles not hastily taken up to serve a turn, but what I have always avowed since I became capable of reflection. I bear not the least dislike to the church of England, though I am not within her pale, nor indeed to any other church; knaves, and bigots of all sects and denominations I hate, and I despise.

> "For modes of faith let zealous bigots fight,
> His can't be wrong, whose life is in the right."
>
> POPE.

"'Papists are distrusted by the laws, and laid under disabilities'—They cannot, I know, (ignorant as I am) enjoy any place of profit, or trust, while they continue papists; but do these disabilities extend so far, as to preclude them from thinking and writing on matters merely of a political nature? Antilon would make a most excellent inquisitor, he has given some striking specimens of an arbitrary temper; the first requisite.

"He will not allow me freedom of thought or speech. The resolves of a former assembly against certain religionists have been compared to the resolves against the proclamation. I

again repeat, the unprejudiced will discern a wide difference between those resolves, and the spirit which occasioned them; it would be no difficult task to shew the disparity, but I choose not to meddle with a subject, the discussion of which may rekindle extinguished animosities. The contemptible comment on the expression—'*We remember and we forgive*,' scarcely deserves animadversion. 'This,' says Antilon, 'is rather too much in the imperial stile.' The Citizen did not deliver his sentiment only but likewise the sentiment of others, *we* catholicks, who think we were hardly treated on that occasion, *we* still remember the treatment, though our resentment hath intirely subsided. It is not in the least surprizing that a man incapable of forming an exalted sentiment, should not really comprehend the force and beauty of one. My exposition of the document of Minucius, as applied by you, is warranted by the whole tenor, and purport of your publications. To what purpose was the threat thrown out of enforcing the penal statutes by proclamation? Why am I told that my conduct is very inconsistent with the situation of one, who 'owes even the *toleration* he enjoys to the favour of government?'—If by instilling prejudices into the governor, and by every mean and wicked artifice you can rouse the popular resentment against certain religionists, and thus bring on a persecution of them, it will then be known whether the toleration I enjoy, be due to the favour of government, or not. That you have talents admirably well adapted to the works of darkness, malice to attempt the blackest, and meanness to stoop to the basest, is too true. The following lines convey an imperfect idea of your character:

> ————"Him, there they found,
> Squat like a toad, close at the ear of Eve;
> Assaying, by his dev'lish art, to reach
> The organs of her fancy, and with them
> Forge illusions, as he lists."—MILTON.

Impudence carried to a certain degree, excites indignation—pushed beyond it, becomes ridiculous. The Citizen's *scandalous misrepresentation* of Petyt is again insisted on. '*The Citizen referred to the jus parliamentarium, he knew the book was in*

the hands of few.' If in your hands it was sufficient; he knew you exceedingly well inclined to expose his misrepresentations, ever upon the catch, and ready to lay hold of even mistakes and inaccuracies, and when acknowledged, still to harp upon them. The crude notions of British polity, which Antilon in a former paper imputed to the Citizen, were quoted as the notions of Montesquieu, enlarged upon, and explained by the writer of a pamphlet on the privileges of the lower house of assembly in Jamaica; he was apprized thereof in my last paper, and he calls this exculpation a *tiny evasion.* The notions whether crude or not, were not the Citizen's; but I presume to assert, that so far from being *crude*, they are judicious, and discover a perfect knowledge of our constitution.

"'Hume's history is a studied apology for the Stuarts, particularly of Charles the first.' Has the historian suppressed any material facts? If not, but has given an artificial colouring to some, softened others, and suggested plausible motives for the conduct of Charles, all this serves to confirm the observation, that an account may in *the main* be true, and not *intirely impartial;* the principal facts may be related, yet the suppression of some attendant circumstance will greatly alter their character and complexion. I asserted that the constitution was not so well improved, and so well settled in Charles's time, as at present. In answer to this, Antilon remarks, that the constitution was clearly settled in the very point infringed, by the levy of ship-money. To this I reply, that the petition of right was only a confirmation of former statutes against the same unconstitutional power, which had been assumed by most preceding kings in direct violation of those statutes. To the imputation '*That you have always fathered your mischievous tricks on others*'—you reply—'roundly asserted, but what proof have you?'—sufficient to support the charge—the mask of hypocrisy, which you have worn so long, is now falling off; the peoples' eyes are at length opened; they know the real author of their grievances; all *his efforts* to regain lost popularity will be ineffectual? once distrusted, he will ever

remain so. A particular detail of all your *mean and dirty tricks* would swell this paper (already too long) to the size of a volume. I may on some future occasion entertain the publick with Antilon's cheats.

"Flebit, & insignis tota cantabitur urbe."

They would discredit even a Scapin, and therefore must not be blended with a question of this serious and general importance. You have said, '*You do not believe me to be a man of honour or veracity.*' It gives me singular satisfaction that you do not, for a man destitute of *one*, must be void of the *other*, and cannot be a judge of *either*. Your mode of expression, which in general is clear and precise, in this instance discovers a confusion of ideas, to which you are not often liable; but you have stumbled on a subject of which you have not the least conception.

"Verbaque provisam rem non invita sequentur."
"If once the mind with clear conceptions glow,
The willing words in just expressions flow."

Honour or *veracity!* Are they then distinct things? Do you imagine that they can exist separately? No, they are most intimately connected; who wants *veracity* wants *principle*, *honour* of course, and resembles Antilon."

First Citizen.

CHAPTER 14.

THE ELECTION.

1773. The election for members of the Lower House took place on May 14th, 1773. Every county returned delegates in opposition to the proclamation of Governor Eden. Annapolis was the one hope of the gubernatorial party. The result of its effort here was as disastrous to the expectations of the "Whigs," as it was farcical to the candidates. The *Gazette* of May 20th tells the quaint story:

"Last Friday was held the election for this city, when Mess. *William Paca* and *Matthias Hammond* were chosen by a very great majority of the freemen, indeed, without any opposition; much was expected, as Mr. *Anthony Stewart* had long declared himself a candidate for this city, even before a vacancy by the resignation on Mr. *Hall*, whose friends in the county insisted upon his taking a poll there. Mr. *Stewart's* private character justly recommended him to the esteem of his fellow citizens; but as he was originally proposed to turn out Mr. *Hall* or Mr. *Paca*, who stood high in the esteem of the people, and as a strong suspicion was entertained of his political principles and court connexions, Mr. *Hammond* was put up in opposition to him, and on the morning of the election so great was the majority of voters for Mr. *Hammond*, that Mr. *Stewart* thought it prudent to decline.

"The polls being closed and Mess. *Paca* and *Hammond* declared duly elected it was proposed and universally approved of to go in solemn procession to the gallows and to bury under it the much detested *proclamation*. A description of the funeral obsequies may not be disagreeable to the publick.

"First were carried two flags with the following labels, on one LIBERTY, on the other NO PROCLAMATION. Between the flags walked the two *representatives:* a clerk and sexton preceded the coffin; on the left, the grave-digger carrying a spade on his shoulder. The *Proclamation* was cut out of *Antilon's* first paper and deposited in the coffin, near which moved slowly on two drummers with muffled drums, and two fifers playing a dead march: after them were drawn six pieces of small cannon, followed by a great concourse of citizens and gentlemen from the country who attended this funeral. In this order they proceeded to the gallows, to which the coffin was for a time suspended, then cut down and buried under a discharge of minute guns. On the coffin was the following inscription:

THE PROCLAMATION.
The child of FOLLY and OPPRESSION
born the 26th of November 1770
departed this life
14th of May 1773
and
Buried on the same day
by
The FREEMEN of Annapolis.

"It is wished, that all similar attempts against the rights of a free people may meet with equal abhorrence: and that the court party convinced by experience of the impotency of their interest, may never hereafter disturb the peace of the city by their vain and feeble exertions to bear down the free and independent citizens.

The Legislature met at Annapolis June 15, 1773. The members of the Lower House were:

St. Mary's County—Thomas Bond, Richard Barnes, Philip Key.

Kent County—William Ringgold, John Maxwell, Emory Sudler.

Anne Arundel County—Brice Thomas Beale Worthington, Thomas Johnson, Jr., Samuel Chase, John Hall.

Calvert County — Alexander Somerville, William Lyles, Richard Parren, John Weems.

Charles County—Josias Hawkins, Francis Ware, Thomas White, Robert Henly Courts.

Baltimore County—Thomas Cockey Deye, Aquila Hall, Charles Ridgely, Walter Tolley, Jr.

Talbot County—Matthew Tilghman, James Lloyd Chamberlaine, Nicholas Thomas, Edward Lloyd.

Dorchester County—William Richardson.

Somerset County—Samuel Wilson, Peter Waters.

Cecil County—John Veazy, Stephen Hyland, Joseph Gilpin.

Prince George's County—Robert Tyler, Thomas Contee, Joseph Sim, Josias Beall.

Queen Anne's County—Turbutt Wright, Solomon Wright, John Brown.

Annapolis City—William Paca, Matthias Hammond.

Worcester County—Nehemiah Holland, John Purnell Robins, William Purnell, Peter Chaille.

Frederick County—Thomas Sprigg Wootten, Charles Beatty, Jonathan Hagar, Henry Griffith.*

Mr. Carroll's distinguished services for his State were immediately recognized in the hearty thanks of his fellow-citizens. The first public manifestation of it, after the elections, was in a card, published May 20th, in the *Gazette*, by William Paca and Matthias Hammond, the delegates elected to the Lower House, from Annapolis. It was addressed "To the First Citizen," it said:

"Sir—Your manly and spirited opposition to the arbitrary attempt of government to establish the fees of office, by

*The counties and city of Annapolis are placed in the above list by the dates, in progressive order, at which they were organized, beginning with St. Mary's county, first spoken of as a county in 1638, and ending with Frederick county, organized in 1748. In the list of delegates are the names of two men—Chase and Paca—who were destined to sign, three years later, the Declaration of American Independence.

proclamation, justly entitles you to the exalted character of a distinguished advocate for the rights of your country. The *proclamation* needed only to be thoroughly understood, to be generally detested, and you have had the happiness to please —to instruct—to convince your countrymen. It is the *publick voice*, Sir, that the establishment of fees, by the *sole authority* of prerogative, is an act of *usurpation*,—an act of *tyranny*, which, in a land of *freedom*, cannot,—must not—be endured.

"The *free* and *independent* citizens of *Annapolis*, the metropolis of *Maryland*, who have lately honored us with the public character of *representatives*, impressed with a just sense of the signal service, which you have done your country, instructed us, on the day of our election, to return you their hearty thanks. Publick gratitude, Sir, for publick services, is the *patriot's* dues: and we are proud to observe the generous feelings of our fellow citizens towards an advocate for liberty.

"With pleasure, we comply with the instructions of our constituents; and in their name we publickly thank you for the spirited exertion of your abilities.

We are, Sir, most respectfully,
Your very humble servants,

WILLIAM PACA,
MATTHIAS HAMMOND.

Annapolis, May 17th, 1773."

"To this card, in the *Gazette* of May 27th, First Citizen replied:—

"To WILLIAM PACA and MATTHIAS HAMMOND, esquires.

"Next to the satisfaction flowing from a consciousness of having merited well of one's fellow-citizens, that of meeting with their applause may be justly ranked. The distinguishing token which the free and independent citizens of Annapolis have lately given me of their regard, claims my most grateful acknowledgments. Strong indeed must set the tide of liberty when even the feeble efforts of an individual in its cause are honored with an approbation the best, the greatest men, are

even '*most ambitious to deserve, and the highest they can receive.*' How superior is the praise of freemen to the mercenary and interested commendations of a minister—even of a monarch when bestowed to countenance and support oppression and injustice! let me entreat you gentlemen to present my most hearty and sincere thanks to your constituents, for the public and truly honourable approbation they have been pleased to express of my endeavours, to warn them against the perfidious attempts of a wicked counsellor, grown daring and confident from a long and unchecked abuse of power.

"The sentiments favourable to liberty, which you have disclosed on this and former occasions, evince that the citizens in honouring you with the publick character of representatives, have made a choice that does equal credit to their spirit and discernment. I am with due respect

Gentlemen, your most
Obliged, and very humble servant
THE FIRST CITIZEN."

The citizens of Anne Arundel, Baltimore and Frederick sent thanks to First Citizen for his letters against the Proclamation.

The poets caught the inspiration of the times and reflected the intangible ideas that the combatants in the sterner arena of the contest had failed to elucidate. "BROOMSTICK and QUOAD," in the *Gazette* of June 10th sings a sinister song about FIRST CITIZEN.

The poet wrote :—

* "A new Edition of a late Letter of Thanks to the FIRST CITIZEN.

"The pains you've been at and the things you have wrote,
To tell us our Governor, *lies in his throat*,
To prove all his council by Loyola's rules
(Save one who's a knave) a cluster of fools,
Entitle you, Sir, to the thrice honour'd name

*See Citizen's Letter, *Gazette*, May 20.

Of Maryland-patriot—Huzza to the fame!
This monstrum horrendum, this da—'d proclamation,
This subject of many a blustering oration,
You had but to tell us was a *kind of taxation*
To make us all hate it; as papists first call
All protestants hereticks, ere they let fall
Their curses upon them. Thus Sir with deceit
Well conducted, a la mode des jesuites,
By the juggle (no more) of a little misnomer
In a manner quite worthy a son of St. Omer,
You've found out (how clever!) a fair shewy handle
T' anathema OLD WHIG by bell, book and candle.
Of brass to your fame a fair pillar we'll raise,
For we've circular letters dispatch'd different ways,
Which to your nostrils reeking incense shall bring,
More sweet than 'th' applauses of a heretick king.'
The GALLANT THERSITES himself shall set sail,
At places, extortion, and courtiers to rail.
A patriot so pure that his father he'd ruin,
And work for your sake *his* children's undoing.
He'll blush not tho' *bearded* and *branded* a lyar,
To openly swear that a million a year
Of tobacco one family plunders and pockets,
Whilst his eye-balls are ready to start from their sockets,
With pursuasion so strong he'll spue and he'll strain,
As to turn every stomach, trepan every brain.
Like yourself tho' your writings *sans* question all be
Insiduous, and paltry, yet courtiers agree
For a patriot they're clever; and we all to a man
Bawl aloud in their praise, that they are the PLAN.
We're assured that no plot we e'er shall succeed in
'Till we send into exile all men of reading
And hang up their patron this little God E * * *
This done, bid the empire of folly all hail,
Whilst patriots and *papists* and puppies prevail—
Our citizens, fully determin'd on sending
Two members of *wonderful great understanding*,
Have pitch'd upon us, and soon as they chose us,
(Instructed we guess BY OLD JOKE AND SUPPOSES)
Commanded us instant to wait upon you
With two fingers embosom'd and our very best bow;
With this here oblation, an ollio of thanks,
Dish'd up at the *gallows* in one of our pranks.
With pleasure, *dread Sir*, their behests we obey
And brimful of gratitude bellow Huzza!
Sejanus of old was a letcher accurst
In blood and in *poison* and s–d—y nurst—
'Gainst his prince too he plotted, but, his crimes in full bloom,

He perish'd and met with his merited doom—
His * children and friends in one gen'ral carnage
Involv'd; no respect to their sex or their age.
May equal destruction at Antilon's head
So like this arch felon be instantly sped!
May his house fall to ruin, and he by a† hook
Be dragg'd thro' the streets and cast into the dock.
Go to with this minister Antilon hight!
A poor little *monkey-shap'd reason fac'd* wight!
Whilst you are a comely sweet person and tall,
With a world Sir of *manhood* and *valour* withal.
What boots it his writing the considerations?
We ask if like you he can damn proclamations?
What boots it he proves in opinion and practice
You homo totus ex mendacio factus!
Bid him read *Escotan*, who says that in writing,
Such lying's no sin, as all's fair in fighting.
What boots it that Pitt, fair Liberty's son,
A friend to his country declar'd Antilon!
Let the question we move be referr'd unto
Our far more sensible and erudite junto,
Who know that he never such skill in the law had
As you Sir, so your most humble
BROOMSTICK AND QUOAD."

Another poet came with his song a few weeks later. It was entitled:

"A new edition of the answer to the letter of thanks, address'd by the representatives of the city of Annapolis to the *First Citizen*, with notes."

"THAT I've '*merited well*' no proof can require;
For, depend on't, I know, *il fait se faire valoir:*
Which, *more meo*, I'll *lib'rally*, translate,
——I'm a damnable, clever, little BARBER, I'll say't:
Independent—as heir to much *compound* got riches,
And *manly*—as witness the size of my breeches.
'Next to the pleasure' of *vomiting* lies,
And praising myself, there is none I more prize,
Than *thanks* for my efforts against Proclamations;
—Such as Antilon got not for his Considerations.
A proof what good judges of writing you are!
And, for which, with gratitude due, I do swear
To write for you still; and, you know who *averr'd*,
That 'such a pen in America never appear'd.'

*Dion Cass, p. 265.

†Vide Juvenal, Sat. X. L. 66——Vid. Tacit. Annal. quart.

Of folly, 'the tide must set strong,' indeed;
When I, little I, *the honourable meed*
Of thanks can obtain, for saying no more,
Than what had been said much better before.
Be this as it may, my point I have gain'd,
(An honour 'the highest' I could have obtain'd)
And well may I triumph, unhop'd, thus to see
A PROTESTANT *people to me* bend the knee.
Whilst with thanksgivings I thus can be cramm'd,
Let Antilon call me an ape, and be d———'d:
I too can call names, as Antilon fast as,
And—'callidus eludere simius hastas.'
With being *Sejanus*, or worse will I tax him.
(And—A'nt I a '*cute*, little, dog at a MAXIM?
For instance—I call it a *maxim*, or rule,
'That a very wise man is not a very great fool.')
Lo, shot up from a HOT-BED, and spread all abroad,
(Of riches and honours how heavy his load!)
Antilon, luxuriant, and fair to be seen,
Chills, with his shadow us *better-born* men.
Mark well what I say: whilst Antilon stands,
(For, the rest are but puppets, play'd by his hands,
Save honest *Jack Peachum*, Who's as close as a snail,
And can deal out a hint with a bite of his nail.)
On the clue of each maze his finger he'll lay,
And, on plots, dark as night, will let in the day;
When *the lawyers* are juggling the people to saddle,
That they, whip and spur, may sit safe a straddle.
Then on him pour your vengeance; the *speakers* are all
You know, on your side—*he must—he shall*, fall.
The modest, in silence, must go, as you list,
For, now, they've no tongue—to tell why they resist:
H————y, long since, disgusted, retir'd,
In despair of obtaining the ends he desir'd;
Nor can H————d, again, stand forth to confound,
By the drum and the fife, his musick you drown'd.
This business accomplish'd, the church soon shall nod,
For her, cursed rebel! in soak I've a rod.
Whilst you shall protect me, no *impious* law,
(Tho' a legion there be) shall keep me in awe.
When your letter I read, my heart leap'd for joy,
That I an occasion so apt might employ
My rancour, and *venom innate* to let fly
At a man I abhor—and, I'll whisper you why.
I could not be married—(you've heard of the fact)
Before I had got 'an ENABLING act.'
For, a man, you'll allow, wou'd cut a poor figure,

(Tho' big as myself, or, perhaps, somewhat bigger)
Who, to any fair virgin his honour shou'd plight,
Without being ENABLED to do——what is right.
In this he oppos'd me; for which, oh, befal him
The *catholick* curse of——what do you call him!
In yours, I observe much pithy expression,
As there was in th' account of your funeral procession:
Which, with your harangues on the ills that befal us,
As spouted in Cow-pen, and, eke, at the gallows,
Evince, that our freemen have shewn their discerning,
By giving us senators, *fam'd for their learning.*
Who, I trust,—yet, I fear,—it is too much to hope,
(Tho' I'd value it more, than the smiles of the pope)
To shield me, secure, from this Antilon's rod
Will prevail on the H****, their thanks too to nod.
Oh, watch for a season, when it a good fit is in,
This point too to gain, for your

FIRST CITIZEN."

On July 2d, 1773, the Lower House passed the following: "The Resolves of the Lower House—

"By the Lower House of Assembly, July 2, 1773.

"ORDERED, That the following be entitled as the resolves of this house, viz:—

"RESOLVED UNANIMOUSLY, That the representatives of the freemen of this province, have the sole right, with the assent of the other part of the legislature, to impose and establish *taxes* or *fees* and that the imposing, establishing or collecting any *taxes* or *fees* on or from the inhabitants of this province, under colour or pretence of any *proclamation* issued by, or in the name of the Lord Proprietary, or other authority, is *arbitrary, unconstitutional* and *oppressive.*

"RESOLVED UNANIMOUSLY, That, in all cases, where no fees are established by law for services done by officers, the power of ascertaining the quantum of the reward, for such services, is constitutionally in a jury upon the action of the party.

"RESOLVED UNANIMOUSLY, That the *proclamation* issued in the name of his Excellency Robert Eden, the Governor, with the advice of his Lordship's council of state, on the 26th day of

November, 1770, was *illegal, arbitrary, unconstitutional,* and *oppressive.*

"RESOLVED UNANIMOUSLY, That the paper writing, under the great seal of this province, issued in the name of the late Lord Proprietary, on the 24th day of November, 1770, for the ascertaining the fees and perquisites to be received by the registers of the land office, was *illegal, arbitrary, unconstitutional,* and *oppressive.*

"RESOLVED UNANIMOUSLY, That the ADVISERS of the said proclamations were enemies to the peace, welfare, and happiness of this province, and the laws and constitution thereof.

"ORDERED, *That the said resolves be printed in the next week's Maryland Gazette, and be continued therein, six weeks successively.*

Signed by order,

JOHN DUCKETT, Cl. Lo. Ho."

To weave the laurels that now encircled the brow of First Citizen into the perfect wreath of fame and honor, tradition tells us, that the Lower House conferred upon the illustrious writer a dignity unique in the annals of a legislative assembly. As one body, the members repaired to the stately mansion of Mr. Carroll on the Spa, and thanked him in person for the valor and success with which he had defended the rights of the people in his controversy with Antilon.

CHAPTER 15.

REVOLUTION FOLLOWS RESISTANCE TO USURPATION.

1773–1776. For almost three years the Province of Maryland was rent with internal dissension over this attempt of the Governor to usurp the taxing power in settling the fees of the officers of the government and in establishing the rates of the clergy. Angry contentions and bitter discussions had resounded from one end of the commonwealth to the other, the Governor, haughty and determined in his illegal course, the people sullen and positive in opposition; all public transactions were filled with a harsh and angry spirit of an unusual severity. During the existence of these three years of contention, the province was without any public system of tobacco inspection. This was a great trial and serious inconvenience to the people—as tobacco was the staple article of commerce and the chief revenue to the planters who constituted the main body of the people.

Private associations of inspection had been formed to escape the rigors of trade produced by the want of a public inspection. The general necessities of the people, for a Provincial system, opened the way to a compromise between the Governor and the Lower House on this particular point, and a general inspection law was enacted in 1773, and the Legislature passed, immediately afterward, an act regulating the fees of the clergy. One element alone of dissension remained—that of the regulation of the fees of public officers. That the Governor had right to regulate them by official proclamation had been the main cause of controversy—to this claim the Lower House would not yield, and the Governor would not retreat from his position. So the Province of Maryland stood bravely at

its post, resisting the right of any power, save the constitutional authorities of the Province, to lay any tax, or charge, or fees upon them without their consent, until the thunders of another and a more formidable revolution, though none the less as just and patriotic, were heard at the portals of the commonwealth.

Governor Eden in June, 1774, made a visit to England. The position of the people of Maryland, on the new and more extensive issue, had already been shown to the Governor before his departure. On May 25th, 1774, the people of Annapolis had assembled in town meeting, and passed resolutions reciting "That it is the unanimous opinion of this meeting, that the town of Boston is now suffering in the common cause of America." The spirit of union, breathing in this vital resolution, was supported in a statement "that it was incumbent on every colony in America to unite in effectual measures to obtain a repeal of the late act of parliament, for the blocking up of the harbor of Boston." Then the city pledged itself to join in an association, *throughout the colonies, to break off trade with England, and to cease traffic with any colony or province that will not join the association!*

Gov. Eden returned to Maryland in November. In the meantime, June 22, 1774, the first State Convention prepartory of resistance to British encroachments, had been held at Annapolis, the intent of the Annapolis resolution of May was enforced, and delegates to Congress were appointed, and, on October 19th, the Peggy Stewart, with its hateful boxes of tea was burned. Then it was, November 8, 1774, that Eddis, the English collector of the port of Annapolis, and friend of the Governor, wrote:

"The Governor is returned to a land of trouble."

That the Governor had an arduous position, the stirring events, in progress about him, thoroughly indicate. The dignified and circumspect bearing of Eden is faithfully depicted by his ardent admirer, the solicitous Eddis, who on March 13, 1775, writes: "It is with pleasure I am able to

assert, that a greater degree of moderation appears to predominate in this province, than in any other on the continent, and I am perfectly assured we are very materially indebted for this peculiar advantage to the collected and consistent conduct of our Governor, whose views appear solely directed to advance the interests of the community; and to preserve, by every possible method, the public tranquility."

On May 13, Mr. Eddis writes: "The Governor continues to stand fair with the people of this Province; our public prints declare him to be the only person, in his station, who, in these tumultuous times, has given the administration a fair and impartial representation of important occurrences; and I can assert, with the strictest regard to truth, that he conducts himself in his arduous department, with an invariable attention to the interest of his royal master, and the essential welfare of the province over which he has the honor to preside."

Governor Eden was in the midst of difficulties that tried every measure of his talent and ability. On May 28, 1774, three days after the meeting of the citizens of Annapolis to express their sympathies with suffering Boston and to concert measures for the public defense, William Eddis wrote to England saying, "all America is in a flame! I hear strange language every day. The colonists are ripe for any measures that will tend to the preservation of what they call their natural liberty. I enclose you the resolves of our citizens; they have caught the general contagion.

"Expresses are flying from province to province. It is the universal opinion here, that the mother country cannot support a contention with these settlements, if they abide strictly to the letter and spirit of their associations."

Events, portentious in importance to the Governor himself personally, now daily occurred around him. The June convention of the provincial deputies, chosen by the several counties of Maryland, reassembled at the city of Annapolis, November 21, 1774. The convention adjourned until Friday the 25th, when fifty-seven deputies were present. Mathew

Tilghman, "the patriarch of the province," was chosen chairman. The delegates, from Maryland, at the late continental Congress, presented the proceedings of Congress to the convention. These proceedings were approved by a unanimous vote, and the convention went forward with a calm and dignified bearing to assume the reins of government and to administer the affairs of State. Thus the Governor found himself suddenly, by a bloodless revolution, transferred from the position of the chief magistrate of a prosperous province to the modest station of a private citizen and to the disagreeable attitude of a political prisoner. Yet, amidst the positive measures of the brave men who were the head and front of the new revolution in Maryland, the Governor was treated with marked consideration, and when the regulation went forth that all must join the association against British importation, and for kindred measures of opposition, the Governor and his family were the single exceptions to the command.

It was a gloomy day for the Governor and his few loyal friends who sought, as Mr. Eddis says, his agreeable company where, in the strained and cautious language of this earliest letter writer from Annapolis, "political occurrences engrossed their conversation in which hope appeared to operate but weakly with respect to the transaction of the times." With all the show of respect for the governor's title and his personal popularity, he was only a royal prisoner where he once ruled with lordly pomp and political authority. All of the Governor's letters had to pass the ordeal of examination by the new provincial officers appointed by the State convention. Eddis, hopeful to the last, writes that the Governor continued "to receive every external mark of attention and respect; while the steady propriety of his conduct, in many trying exigencies, reflected the utmost credit on his moderation and understanding."

The sentiments of the times in Maryland, as early as May 24th, 1775, were evinced by the passage of these resolutions by the State convention:

"Resolved, That we acknowledge King George the Third as our lawful sovereign."

"Resolved, *That the formation of militia be continued, and subscriptions for the same be levied by the several counties.*"

Loyalty to the king! Legions for the people! Reverence and revolution in the same resolution.

The times were too big with conflict for matters to remain in even this partially beatific condition for the Governor. In April, 1776, a vessel containing a packet of letters from Lord George Germaine, Secretary of State for the American Department, was seized by an armed vessel in the Provincial service. In the packet was a letter that acknowledged that Governor Eden had sent important information to the government, and Eden was assured "of his Majesty's entire approbation of his conduct, and was directed to proceed in line of his duty with all possible address and activity."

Gen. Lee, to whom the letter was sent, who had command of the Southern district, immediately despatched the letter to Maryland, with an urgent recommendation that the Governor be seized, together with all the papers and documents of his office. Important State secrets, it was thought, would be discovered. The Council of Safety in Maryland acted with great moderation in this critical and delicate situation. The State Convention had promised Gov. Eden his personal safety. The Governor, by his moderation, had won universal regard. The Whig Club, of Baltimore, almost precipitated matters to a crisis by urging that the Governor be arrested, and report went abroad in Annapolis that members of that body,—an extra-executive and unwarranted organization,—were on the way to the capital to seize the Governor's person. The Council of Safety discreetly avoided haste and violence, and only required the Governor to give his parole that he would not take any steps to leave America until after the meeting of the next State Convention. The Governor resisted this requisition for some time; but it was unavoidable, and he had to give his word. This he did on April 16th.

Straining the critical situation still further, the Continental Congress urged, too, the seizure of the Governor. Maryland stood by its State's rights and its word, and acquitted itself—with the honor that always attaches to public events when Marylanders are called upon to act for their country's safety or credit. Virginia had joined in the request of Congress; but, with all these forces accumulated to make the commonwealth unfaithful to its promise, the Maryland Convention kept its proffered word, and steadfastly refused to break its plighted faith to the Governor.

On the seventh of May 1776, the Maryland Convention assembled at Annapolis. On the 23d, it resolved that Governor Eden's "longer continuance in the Province, at so critical a period, might be prejudicial to the cause in which the colonies were unanimously engaged; and that, therefore, his immediate departure for England was absolutely necessary." An address was ordered to be prepared and presented to the Governor. This was done the next evening by a Committee of the Convention. The address acknowledged the services rendered by the Governor to the country on many former occasions; and it expressed the warmest wishes, that "when the unhappy disputes which at present prevail, are constitutionally accommodated, he may speedily return and reassume the reins of government."

In this severe tension in public affairs and during the period of serious threatenings of violence to his person, Gov. Eden remained self-possessed and relied upon the pledges of the Maryland Convention to give him a safe-conduct out of the Province.

On Sunday, June 23d, the British Frigate, Fowey, Captain George Montague, arrived to take Gov. Eden to England. The first Lieutenant of the ship came ashore under a flag of truce, the militia were under arms, and a general confusion prevailed in the city on the Severn. "Till the moment of the Governor's embarkation," writes Mr. Eddis, "there was every reason to apprehend a change of disposition to his prejudice. Some

few were even clamorous for his detention. But the Council of Safety, who acted under a resolve of the Convention, generously ratified the engagements of that body; and, after they had taken an affectionate leave of their late supreme magistrate, he was conducted to the barge with every mark of respect due to the elevated station he had so worthily filled.

"A few minutes before his departure, I received his strict injunctions to be steady and cautious in the regulation of my conduct and not to abandon my situation, on any consideration, until absolutely discharged by an authority, which might, too probably, be erected on the ruins of the ancient constitution. I promised," says Mr. Eddis, "the most implicit attention to his salutary advice; and rendered my grateful acknowledgements for the innumerable obligations he had conferred on me; at the same time I offered my most fervent wishes that his future happiness might be in full proportion to the integrity of his conduct, and the benevolence of his mind.

"In about an hour the barge reached the Fowey, and the Governor was received on board under a discharge of cannon; his baggage and provisions were left on shore, to be forwarded in the course of the ensuing day.

"During the night, some servants, and a soldier belonging to the Maryland regiment, found means to escape on board his Majesty's ship, which being almost immediately discovered, a flag was sent off, with a message to Captain Montague, demanding the restitution of the men, previous to any further communication.

"Captain Montague, in reply, acquainted the council of safety, 'that he could not, consistently with his duty, deliver up any persons who, as subjects of his Britannic Majesty, had fled to him for refuge and protection; he had strictly given it in charge to such officers as might be sent on shore, not to bring off any of the inhabitants without the express permission of the ruling powers; but that the case was extremely different respecting those who had, even at hazard of life, given evidence of their attachment to the ancient constitution.'

"This message not being deemed satisfactory, a letter was dispatched to the governor demanding his interference in this critical business, with an intimation, that the detention of the men would be considered as a manifest breach of the regulation under which flags of truce are established.

"Governor Eden received the officer with proper attention, but replied, he had only to observe, that on board his Majesty's ship, he had not the least authority; and that Captain Montague was not to be influenced by his opinion, as he acted on principles which he conceived to be strictly consistent with the line of his duty.

"The event of this negotiation was disagreeable in its consequence to the governor. The populace were exceedingly irritated, and it was thought expedient not only to prohibit all further intercourse with the Fowey, but also to detain the various stores which the governor had provided for his voyage to Europe. This resolution was intimated in express terms; and, on the evening of the 24th, Captain Montague weighed anchor, and stood down the bay, for his station on the coast of Virginia."

Eight years after this dramatic departure of Governor Eden, a man broken in health, yet brave in spirit, came to Annapolis. It was Robert Eden. He sought the restitution of his property. A brief period of life remained to him, and, in the house now owned by the Sisters of Notre Dame, on Shipwright street,—the mansion made famous by the novelist as the home of Richard Carvel—the once lordly Governor of Maryland, on September 2d, 1784, of dropsy, superinduced by fever, at the age of forty-three years, died. Under the Episcopal Church, in old St. Margaret's Parish, on the North Side of Severn, overlooking the site of "ye antient capital" of Maryland, where once Robert Eden was its leading citizen and chief magistrate, the ashes of the last English Governor of the Province were buried. The sacred edifice has since perished in sacrificial fires; but the stone cross, over an

unlettered grave, still supports tradition in its legend that "here lies buried an English Lord."

To that man of whom William Pinkney, "the greatest of advocates," said:—"Even amongst such men as Fox, Pitt and Sheridan, he had not found his superior;" who had been America's greatest defender with that weapon mightier than the sword in his "Considerations" against English taxation in 1765; who had given, it is believed, from all the proof at hand, the elder Pitt, his arguments in defence of the Colonies in Parliament in 1766; he, who is named as the projector and "Father of American Industries," that man who had never abandoned his belief that the English nation had no right to tax, without their consent, the American colonies; was awarded the fate of the exile. The Whig Club of Baltimore demanded his expulsion from the Province. From Maryland Daniel Dulany went to England and his property was confiscated—the estates of a man who had never breathed an unfriendly breath to America and had never raised his hand in one overt act. After the Revolution, Mr. Dulany returned to Maryland, and settled in Baltimore. A new order of things had arisen. The talents of this distinguished jurist and statesman no more flashed from the lofty altitude of public position; for his superior ability, in the brisk atmosphere of the young Republic, was no longer recognized in official station. Dulany died in Baltimore, on March 19, 1797, in the 76th year of his age.

To "First Citizen," came an illustrious career—a delegate to Congress; a diplomat of the young nation to Canada to enlist the French Catholics in the cause of the colonies; a signer of the Declaration of Independence; United States Senator; the revered citizen and honored statesman, he lived to be the last of those who appended their signatures to the immortal document that gave birth to the nation, and, in the long array of distinguished soldiers, captains, statesmen, advocates, jurists, and diplomats, that Maryland has given the Republic, no name excites warmer glows of State pride and national enthusiasm in the "Land of the Sanctuary," than that of Charles Carroll, of Carrollton.

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